



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNSD, MNR, MNDC, FF

### Introduction

This hearing dealt with cross applications. The landlord is seeking a monetary order and an order to retain the security deposit in partial satisfaction of the claim. The tenant is seeking the return of double the security and pet deposits. This matter was originally scheduled for September 25, 2013 but an adjournment was required so that the parties could exchange and receive each other's evidence. Both parties participated in the conference call hearing. Both parties gave affirmed evidence.

### Issue to be Decided

Is either party entitled to a monetary order as claimed?

### Background Evidence & Analysis

Both parties agree to the following:

The tenancy began on November 30, 2005 and ended on May 29, 2013. The tenants were obligated to pay \$709.00 per month in rent in advance and at the outset of the tenancy the tenants paid a \$300.00 security deposit and a \$300.00 pet deposit. A condition inspection report was conducted at move in and in move out and both parties participated in the inspections. The tenant gave proper notice to end the tenancy. The tenant provided their forwarding address in writing on May 29, 2013.

As explained to the parties during the hearing, the onus or burden of proof is on the party making the claim. In this case, both parties must prove their claim. When one party provides evidence of the facts in one way, and the other party provides an equally probable explanation of the facts, without other evidence to support the claim, the party making the claim has not met the burden of proof, on a balance of probabilities, and the claim fails.

I address each party's claim and my findings as follows:

**Tenants Claim** - The tenant is seeking double their security and pet deposits as the landlord did not file for dispute resolution or return the original amount within fifteen days of the tenancy ending or receiving the tenants forwarding address; whichever the later. Section 38 addresses this issue as follows:

**Return of security deposit and pet damage deposit**

**38** (1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of

(a) the date the tenancy ends, and

(b) the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one of the following:

(c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;

(d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

(2) Subsection (1) does not apply if the tenant's right to the return of a security deposit or a pet damage deposit has been extinguished under section 24 (1) *[tenant fails to participate in start of tenancy inspection]* or 36 (1) *[tenant fails to participate in end of tenancy inspection]*.

(3) A landlord may retain from a security deposit or a pet damage deposit an amount that

(a) the director has previously ordered the tenant to pay to the landlord, and

(b) at the end of the tenancy remains unpaid.

(4) A landlord may retain an amount from a security deposit or a pet damage deposit if,

(a) at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant, or

(b) after the end of the tenancy, the director orders that the landlord may retain the amount.

(5) The right of a landlord to retain all or part of a security deposit or pet damage deposit under subsection (4) (a) does not apply if the liability of the tenant is in relation to damage and the landlord's right to claim for damage against a security deposit or a pet damage deposit has been extinguished under section 24 (2) *[landlord failure to meet start of tenancy condition report requirements]* or 36 (2) *[landlord failure to meet end of tenancy condition report requirements]*.

**(6) If a landlord does not comply with subsection (1), the landlord**

**(a) may not make a claim against the security deposit or any pet damage deposit, and**

**(b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.**

(7) If a landlord is entitled to retain an amount under subsection (3) or (4), a pet damage deposit may be used only for damage caused by a pet to the residential property, unless the tenant agrees otherwise.

(8) For the purposes of subsection (1) (c), the landlord must use a service method described in section 88 (c), (d) or (f) *[service of documents]* or give the deposit personally to the tenant.

The landlords' agent confirmed that he received the tenants forwarding address in writing at the move out inspection on May 29, 2013 but did not file for dispute resolution until almost three months later on August 19, 2013. Based on the above I find that the tenant is entitled to the return of double their security and pet deposit with the accrued interest of \$21.24 for a total amount of \$1221.24.

**Landlords Claim** – The landlords are seeking a monetary order for \$835.49. The claim breakdown is \$218.77 for suite cleaning, \$438.71 for pet damages such as torn carpet, urine stains, feces stains, and broken screen on the door, \$128.01 for the replacement and repair of miscellaneous items and \$50.00 filing fee. The landlord provided photos

and the condition inspection report to support their claim. The landlords' agent gave testimony to the scope of work as he was the one that conducted the cleaning and repairs. The tenants stated that they dispute the landlords claim. The tenants stated that agreed with many of the deficiencies of the unit as laid out in the report, but they were not responsible for them. The tenants stated that the landlord altered and added items to the condition inspection report after they signed it without their knowledge or authorization. I accept the landlords' agent testimony. He was clear, consistent and concise. In addition to the report the photos reflected the claims as made by the landlords. Based on all of the above and on the balance of probabilities I find that the landlord is entitled to \$835.49.

Section 72 allows for the "offsetting of costs". As both parties have been awarded a monetary order I will apply the offsetting of  $\$1221.24 - \$835.49 = \$385.75$  to the benefit of the tenant.

### Conclusion

I grant the tenants an order under section 67 for the balance due of \$385.75. This order may be filed in the Small Claims Court and enforced as an order of that Court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: November 7, 2013

---

Residential Tenancy Branch

