



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Millstream Ventures Ltd.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      FF, MNSD

### Introduction

This is an application for a Monetary Order for the return of the security/pet deposit and any penalties required under the Residential Tenancy Act.

Some documentary evidence and written arguments have been submitted by the parties prior to the hearing. I have thoroughly reviewed all submissions.

I also accept that some testimony from the parties.

All testimony was taken under affirmation.

### Issue(s) to be Decided

The issues to be decided is whether or not the tenant has established the right to a monetary order against the landlord and if so in what amount.

### Background and Evidence

This tenancy began on August 1, 2011 and a combined security/pet deposit of \$830.00 was paid on that date.

This tenancy ended in October, 2013, and the landlord has admitted that the tenant provided him with the mailing address, in writing, at the end of the tenancy.

On October 31, 2013 the landlord returned a portion of the security/pet deposit to the tenant in the form of a cheque in the amount of \$520.00. To date the tenant has not cashed that cheque.

The landlord testified that he did not apply for dispute resolution to keep any or all of the tenant's security/pet deposit, nor did he get any written permission from the tenant at the end of the tenancy to keep any or all of the security/pet deposit.

The landlord stated that he did not believe he had to apply for dispute resolution because the tenancy agreement allowed him to withhold the security/pet deposit for any deficiencies.

### Analysis

It is my finding that the landlord has not complied with the Residential Tenancy Act, and did not have the right to withhold any or all of the security/pet deposit.

As stated above the landlord has argued that the tenancy agreement allowed him to withhold the security/pet deposit, however Section 20(e) of the Residential Tenancy Act states:

**20** A landlord must not do any of the following:

20(e) require, or include as a term of a tenancy agreement, that the landlord automatically keeps all or part of the security deposit or the pet damage deposit at the end of the tenancy agreement.

Also section 6(3) of the Residential Tenancy Act states:

6(3)(a) A term of a tenancy agreement is not enforceable if the term is inconsistent with this Act or the regulations,

Further Section 38 of the Residential Tenancy Act states that, if the landlord does not either return the security/pet deposit, get the tenants written permission to keep all or part of the security/pet deposit, or apply for dispute resolution within 15 days after the later of the date the tenancy ends or the date the landlord receives the tenants forwarding address in writing, the landlord must pay the tenant double the amount of security/pet deposit.

The landlord has not returned the tenants full security/pet deposit or applied for dispute resolution to keep any or all of tenant's security/pet deposit, and the time limit in which to apply is now past.

This tenancy ended in October of 2013 and the landlord has admitted that he had a forwarding address in writing by the end of the tenancy, and there is no evidence to show that the tenant's right to return of the deposit has been extinguished.

Therefore the landlord must pay double the amount of the security/pet deposit to the tenant.

The tenant paid a combined security/pet deposit of \$830.00, and therefore the landlord must pay \$1660.00.

I also allow the request for recovery of the \$50.00 filing fee.

The total amount therefore is \$1710.00. I will issue an Order for this full amount, however if the tenant is still able to cash the \$520.00 cheque that was sent to her on October 31, 2013, that will be considered a partial payment towards this Order.

My decision was given orally at the hearing, and after hearing the decision the respondent argued that since the notice of hearing and hearing package was addressed to him personally, and not to his company it should not be considered served, however he did admit that he is the president of the company and he did receive the documents, and therefore it is my finding that the respondent did receive the notice of hearing and hearing package within the required timeframe and is therefore considered served.

### Conclusion

I have issued a Monetary Order in the amount of \$1710.00.

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: March 10, 2014

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Residential Tenancy Branch

