



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### Dispute Codes

LANDLORD: MNSD, FF  
TENANT: MNSD

### Introduction

This hearing dealt with cross applications for Dispute Resolution filed by both the Landlord and the Tenant.

The Landlord filed to retain the Tenant's security deposit and pet deposit for damage to the unit and to recover the filing fee for this proceeding.

The Tenant filed for the return of her security and pet deposits.

Service of the hearing documents by the Landlord to the Tenant were done by registered mail on May 29, 2014, which was 9 days after the Landlord had filed his application. The Landlord said he tried to personally deliver the hearing package to the Tenant, but he was unable to find the Tenant's new address. The Tenant said she has not received the Landlord's hearing package but she wants to deal with this issue so the Tenant requested the hearing proceed to hear both applications. The Arbitrator explained the Landlord's application to the Tenant before proceeding with the hearing.

Service of the hearing documents by the Tenant to the Landlord were done by personal delivery to an adult person at the Landlord's residence on February 17, 2014, in accordance with section 89 of the Act.

The Landlord confirmed that he received the Tenant's hearing package.

### Issues to be Decided

Landlord:

1. Is the Landlord entitled to retain the Tenant's deposits?

Tenant:

1. Is the Tenant entitled to recover the security and pet deposits?

### Background and Evidence

This tenancy started on June 15, 2013 as a month to month tenancy. The tenancy agreement was verbal as the Landlord did not provide a written tenancy agreement. Rent was \$1,500.00 per month payable in advance of the 1<sup>st</sup> day of each month. The Tenant paid a security deposit of \$750.00 and a pet deposit of \$100.00 in advance of the tenancy. The Tenant said there were no condition reports completed at the start and the end of the tenancy. The Landlord said he has been a landlord for over twenty years and the unit was in good condition when the Tenant moved in.

The Tenant said on November 29, 2013 she gave the Landlord written notice to end the tenancy by email for January 1, 2014. The Tenant said she moved out on November 29, 2013 and her roommates move out sometime in December, 2013. The Landlord said he was told the roommates moved out of the unit by December 29, 2013 and he said he did not see the unit at the end of the tenancy because he was out of the country. The Tenant continued to say that she gave the Landlord her written forwarding address by email on January 14, 2014 and again in writing with her application for dispute resolution on February 17, 2014. The Tenant said that she requested the return of her security deposit of \$750.00 and her pet deposit of \$100.00 on both occasions. The Tenant continued to say she, her mother and her roommates cleaned the unit and had the carpet professionally cleaned before they moved out. The Tenant said the unit was in good condition except for two small holes in a wall when they moved out. The Tenant said she is requesting the return of her security deposit of \$750.00 and her pet deposit of \$100.00.

The Landlord said the rental unit was left in a mess. The Landlord said there was garbage and debris in the unit, which he had to hire a junk removal company to haul the debris including furniture away and the Landlord had to hire cleaners and a carpet cleaning company to shampoo the carpets. The Landlord said the carpets were stained with cat urine and feces and he may have to replace the carpets. The Landlord submitted paid receipts for junk removal in the amount of \$275.00, carpet cleaning in the amount of \$186.80 and a receipt for replacement blinds in the amount of \$79.71. As well the Landlord submitted an unsigned letter from the new tenants in the rental unit which says that they were disappointed with the condition of the unit when they moved in on January 3, 2014. The Landlord also provided 6 photographs of the rental unit to support his position.

The Tenant said that the unit was in poor condition when they moved in and the carpets were stained and there was a sofa and other junk at the unit when they arrived at the rental unit. The Tenant continued to say the Landlord did not do a move in condition inspection report, but if he did it would have showed the unit was not clean and there was damage to it.

The Landlord said the unit was clean and the carpets were professionally cleaned prior to the Tenant moving in. The Landlord said there were stains in the carpet, but the stains were not cat urine and cat feces. The Landlord submitted no corroborative evidence to support the condition of the rental unit at the start of the tenancy.

The Tenant continued to say the Landlord did not provide any opportunities to do condition inspection and he has not returned her deposits. The Tenant said in closing that she is requesting her deposits back in the amount of \$850.00.

The Landlord said he was not returning the Tenant's deposits as there was damage and cleaning costs incurred to the rental unit. The Landlord had no other closing remarks.

### Analysis

Sections 24 and 36 of the Act say if a landlord does not complete a move in and move out condition inspection report the landlord's right to claim against the tenants security or pet deposit is extinguished. I find the Landlord did not complete a move in or move out condition inspection report therefore the Landlord's claim against the Tenant's security and pet deposits for damage is extinguished. As a result, I dismiss the Landlord's request to retain the Tenant's security and pet deposits.

Section 23 and 35 of the Act say that a landlord and tenant must do move in and move out condition inspections to establish the condition of the rental unit at the start and the end of the tenancy. If this is not done and there is no other acceptable evidence of the condition of the rental unit at the start and the end of a tenancy then the applicant cannot establish the amount of damage or if any damage was done to the rental unit. In determining a claim for damage or loss an applicant **must** establish four things in order to prove the claim. These requirements are:

1. Proof the damage or loss exists.
2. Proof the damage or loss happened solely because of the actions of the respondent.
3. Verify the actual amounts required to compensate for the claimed loss or to rectify the damage.
4. Proof that the claimant has taken steps to minimize the loss.

Although the Landlord has said the unit was left in poor condition the Landlord has not established that the unit was in poorer condition on move out than it was on move in. The Landlord has not provided any verification of the condition of the unit at the start of

the tenancy therefore there is no base line to establish the condition of the carpets, if there was debris or junk already at the unit or the general condition of the unit at the start of the tenancy. The Landlord has not established grounds to prove his loss or claims. Consequently I dismiss without leave to reapply the Landlord's claim for cleaning costs, carpet cleaning and junk removal.

With respect to the Tenant's application for the return of the security deposit of \$750.00 and the pet deposit of \$100.00.

Section 38 (1) of the Act says that 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.

And Section 38 (6) says 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.**

I find from the Tenant's testimony and written evidence that she did give the Landlord a forwarding address by email on January 14, 2014 and in writing on with her dispute resolution application on February 17, 2014. The Landlord did not repay security deposit to the Tenant within 15 days of the end of the tenancy or 15 days after receiving a forwarding address in writing from the Tenant, nor did the Landlord apply for dispute

resolution by March 5, 2014. Consequently I find for the Tenant and grant an order for double the security deposit of \$750.00 and double the pet deposit of \$100.00 in the amount of \$1,700.00.

A monetary order has been issues to the Tenants for the following:

Double Security and Pet deposits	\$ 1,700.00
Total	\$ 1,700.00

As the Landlord has not been successful in this matter I order the Landlord to bear the cost of the filing fee of \$50.00 that he has already paid.

### Conclusion

The Landlord's application is dismissed without leave to reapply.

A monetary order has been issued to the Tenant for \$1,700.00.

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: June 04, 2014

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Residential Tenancy Branch

