



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **Decision**

### **Dispute Codes:**

MNSD, FF

### **Introduction**

This Dispute Resolution hearing was convened to deal with an Application by the tenant for an order for the return of the security deposit and pet damage deposit retained by the landlord.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained. The participants had an opportunity to submit documentary evidence prior to this hearing, and the evidence has been reviewed. The parties were also permitted to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the affirmed testimony and relevant evidence that was properly served.

### **Issue(s) to be Decided**

Is the tenant entitled to a refund of the security deposit and pet damage deposit pursuant to section 38 of the Act?

### **Background and Evidence**

The tenancy began in July 2009 and current rent was \$1,700.00. A security deposit of \$797.50 and pet damage deposit of \$850.00 had been paid. The tenancy ended on January 31, 2014. The tenant's written forwarding address was given to the landlord on February 4, 2014.

The land lord acknowledged that the security deposit was not returned and that the tenant had never given the landlord written permission to keep any portion of the security deposit.

The landlord testified that the tenant terminated the fixed term tenancy prior to the expiry date of June 30, 2014 and therefore owes the landlord \$1,700.00 compensation

for loss of revenue for March 2014 and other costs including a re-rental fee under the tenancy contract. The landlord acknowledged that no application for dispute resolution had been made by the landlord seeking an order to retain the deposits.

The landlord submitted a package of evidence in defense of the tenant's claim against the landlord for the refund of the security deposit and pet damage deposit.

### **Analysis**

With respect to the return of the security deposit, I find that section 38 of the Act states that the landlord can retain a security deposit only if:

- the tenant gives written permission at the end of the tenancy, or if
- the landlord has obtained an order through dispute resolution authorizing the landlord to keep the deposit to satisfy a liability or obligation of the tenant.

Other than the above, section 38 of the Act requires that the security deposit and pet damage deposit be refunded to the tenant within 15 days of the end of the tenancy and the date that the written forwarding address has been received, whichever is later.

However, if the landlord decides to make a claim against the tenant to keep the deposit for a debt or damages at the end of the tenancy, then the landlord's application for dispute resolution must be filed within 15 days after the end of the tenancy and the date that the forwarding address was received.

Based on the evidence and the testimony, I find that, at the end of the tenancy, the tenant did not give the landlord written permission to keep the deposit, nor did the landlord subsequently make an application for Dispute Resolution seeking an order to keep the deposit within the 15-day deadline to do so.

Section 38(6) provides that, if a landlord does not comply with the Act by refunding the deposit owed or making application to retain it within 15 days, the landlord may not make a claim against the security deposit, and must pay the tenant double the amount of the security deposit.

With respect to the landlord's testimony that the tenant owes the landlord monetary compensation for unpaid rent and for damages, I was not able to hear, nor consider any of the landlord's monetary claims against the tenant during these proceedings because this hearing was convened solely to deal with the tenant's application under section 38 of the Act and that was the only matter officially before me.

The landlord did not make a cross application. That being said, I find that the landlord is at liberty to make their own separate application to claim damages, pursuant to section 67 of the Act, if the landlord decides to do so.

In the matter before me, however, I find that under section 38, the tenant is entitled to be paid double the \$797.50 security deposit in the amount of \$1,595.00. The tenant is also entitled to be paid double the \$850.00 pet damage deposit in the amount of \$1,700.00, plus the \$50.00 cost of this application, for total compensation of \$3,300.00.

Based on the testimony and evidence presented during these proceedings, I hereby issue a monetary order for \$3,300.00 in favour of the tenant. This order must be served on the Respondent and may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

### **Conclusion**

The tenant is successful in the application and is granted a monetary order for an amount equivalent to double the security and pet damage deposits under section 38(6) of the Act.

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 19, 2014

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Residential Tenancy Branch

