



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding 2225 TRIUMPH APT LTD  
and [tenant name suppressed to protect privacy]

## **DECISION**

### Dispute Codes

For the landlord – MNR, MNSD, FF

For the tenant – MNSD, FF

### Introduction

This hearing was convened by way of conference call in response to both parties' applications for Dispute Resolution. The landlord applied for a Monetary Order for unpaid rent or utilities; a Monetary Order for damage to the unit, site or property; for an Order permitting the landlord to keep all or part of the tenant's security and pet deposit; and to recover the filing fee from the tenant for the cost of this application. The tenant applied for a Monetary Order to recover the security and pet deposit plus the mailbox and key deposit.

Service of the hearing documents, by the tenant to the landlord, was done in accordance with section 89 of the *Act*; served to the landlord's agent in person on June 18, 2014.

The hearing went ahead as scheduled the tenant dialed into the conference call. The telephone line remained open while the phone system was monitored for ten minutes and no one on behalf of the landlord called into the hearing during this time. Based on this I find that the landlord has failed to present the merits of their application and the application is dismissed without leave to reapply. The hearing continued on the tenant's

application. The tenant was provided the opportunity to present evidence orally, in writing, and in documentary form.

Issue(s) to be Decided

Is the tenant entitled to a Monetary Order to recover the deposits paid?

Background and Evidence

The tenant testified that this tenancy started on April 01, 2012. Rent for this unit was \$1,700.00 per month due on the 1<sup>st</sup> of each month. The tenant paid a security deposit of \$850.00, a pet deposit of \$850.00 and a key and mailbox deposit of \$25.00.

The tenant testified that a move in condition inspection was completed with the tenant and landlord at the start of the tenancy. However, at the end of the tenancy the tenant found evidence of mould in the unit and reported this to the landlord. The tenant vacated the unit on April 08, 2014 but had paid rent up to April 15, 2014. The landlord was given permission to enter the unit to look at the mould. The tenant testified that he returned to the unit and found the landlord had removed a significant amount of drywall and was completing work in the bathroom. The tenant testified that the landlord did not give the tenant any opportunity to attend a move out condition inspection prior to this work taking place or at any other time at the end of the tenancy.

The tenant testified that the landlord's agent was given a letter containing the tenant's forwarding address and request to return the security, pet, mailbox and key deposits on April 29, 2014. A copy of this letter has been provided in documentary evidence. The tenant testified that the landlord has failed to return the deposits and the tenant seeks a Monetary Order for \$1,725.00. The tenant also seeks to recover the filing fee of \$50.00.

### Analysis

Section 38(1) of the *Act* says that a landlord has 15 days from the end of the tenancy agreement or from the date that the landlord receives the tenant's forwarding address in writing to either return the security deposit to the tenant or to make a claim against it by applying for Dispute Resolution. If a landlord does not do either of these things and does not have the written consent of the tenant to keep all or part of the security deposit then pursuant to section 38(6)(b) of the *Act*, the landlord must pay double the amount of the security deposit to the tenant.

Based on the above and the evidence presented I find that the landlord did receive the tenant's forwarding address in writing on April 29, 2014. As a result, the landlord had until May 14, 2014 to return the tenant's security deposit or file a claim to keep it. I find the landlord did file an application to keep the security and pet deposits on May 01, 2014; however, the landlord has not appeared at the hearing and the landlord has extinguished their right to file a claim against the deposits for damages as the landlord failed to complete a move out condition inspection of the property with the tenant in accordance with s. 36(2) of the *Act*. Therefore, even though the tenant has not applied for double the deposits and has not waived their right to recover double the deposits, I am required to award double the security deposit, the pet deposit, and the mailbox and key deposit pursuant to section 38(6)(b) of the *Act*.

As the tenants claim has merit I find the tenant is also entitled to recover the filing fee of \$50.00 pursuant to s. 72(1) of the *Act*

### Conclusion

I HEREBY FIND in favor of the tenant's monetary claim. A copy of the tenant's decision will be accompanied by a Monetary Order for \$3,500.00. The Order must be served on the respondent. Should the respondent fail to comply with the Order the Order may be enforced through the Provincial Court as an Order of that Court.

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

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: September 04, 2014

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Residential Tenancy Branch

