



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNSD, FF

### Introduction

The tenant applies to recover a security deposit and pet damage deposit, doubled pursuant to s. 38 of the *Residential Tenancy Act* (the “Act”).

### Issue(s) to be Decided

Does the relevant evidence presented at hearing show on a balance of probabilities that the tenant is entitled to the relief requested?

### Background and Evidence

The rental unit is a two bedroom strata titled apartment. The tenancy started in October 2013 for a term ending October 31, 2014. The rent was 1550.00. The written tenancy agreement shows that a \$775.00 security deposit and a \$250.00 pet damage deposit were paid on October 5, 2013.

The tenancy ended July 31, 2014 though the tenant vacated on July 25<sup>th</sup>.

The parties agree the tenant provided her forwarding address in writing at the move-out inspection on July 25<sup>th</sup>.

The landlord returned only \$211.25 of the deposit money, by mail sent July 29<sup>th</sup>. The landlord kept the balance of the deposits pursuant to a clause in the tenancy agreement that provided if the tenant ended the fixed term tenancy agreement early she would be responsible for “all the administrative costs of re-renting”, without prejudice to the landlord’s right to pursue her for damages for damage and for loss of rental income.

The agreement describes the administrative costs as “liquidated damages.”

The landlord kept what she understood to be the “liquidated damages” of an amount equivalent to one-half month’s rent. Though the agreement does not set any amount as “liquidated damages” nor any formula to calculate an amount, the landlord’s agent Ms. T., who dealt with the tenant at the time of signing it, testified that she tells all tenants that the amount will be one-half month’s rent.

The landlord testified that she felt she had the tenant’s written authorization to keep the money because she had emailed the tenant with the figure and received no response.

### Analysis

There was some indication the landlord felt she had not received the pet damage deposit. In my view, the tenancy agreement is conclusive on the question. It says the \$225.00 pet damage deposit was paid on October 5, 2013.

Section 38 of the *Act* sets out the law relating to the issue here. The relevant provisions are:

#### **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.
- (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.
- (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.

The landlord does not have the tenant's written authorization to retain any part of the deposit money. The tenant's failure to respond to the landlord is, firstly, not an acceptance at law, and secondly, does not comply with the "in writing" requirement of s. 4(a), above.

Ms. T. may have indicated to the tenant at the start of the tenancy that the "liquidated damages" would be one-half month's rent, however, that still does not authorize the landlord to unilaterally keep a part of the deposit money without the tenant's written authorization or an order from the director.

The tenant is entitled to recover double the amount of the deposit money held at the end of the tenancy: \$2050.00, plus the \$50.00 filing fee for this application, less the \$211.25 received.

This decision does not mean the tenant does not owe the landlord money under the clause in question. The landlord is free to apply for a monetary award against the tenant for damages under that clause.

#### Conclusion

The tenant's application is granted. There will be a monetary order against the landlord in the amount of \$1888.75.

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: October 17, 2014

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Residential Tenancy Branch

