



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDC, MNSD

### Introduction

This is an application filed by the tenant for a monetary order for money owed or compensation for the loss of quiet enjoyment and return of the security deposit.

Both parties attended the hearing by conference call and gave undisputed testimony. As both parties have attended and have confirmed receipt of the notice of hearing package and the submitted documentary evidence of both parties, I am satisfied that both parties have been properly served.

At the outset of the hearing, the tenant stated that she is unsure of the amount and why she requested a monetary claim for the loss of quiet enjoyment. As such, the tenant has withdrawn this portion of her claim. No further action is required.

### Issue(s) to be Decided

Is the tenant entitled to a monetary order?

### Background and Evidence

This tenancy began on July 1, 2008 on a month to month basis as shown by the submitted copy of the signed tenancy agreement dated June 13, 2012. The monthly rent was \$660.00 per month.

The tenant seeks a monetary claim of \$650.00 for the return of the security and pet damage deposits and the accrued interest to date. The landlord confirmed in his direct testimony that he still holds both the \$325.00 pet damage and the \$325.00 security deposits without the permission of the tenant or an order from the Residential Tenancy Branch. The tenant waived her claim for the return of double the pet damage and security deposits under section 38 of the Act.

### Analysis

Section 38 of the Residential Tenancy Act speaks to the return of a pet damage and security deposits. It states,

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.

(2) Subsection (1) does not apply if the tenant's right to the return of a security deposit or a pet damage deposit has been extinguished under section 24 (1) *[tenant fails to participate in start of tenancy inspection]* or 36 (1) *[tenant fails to participate in end of tenancy inspection]*.

(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.

(5) The right of a landlord to retain all or part of a security deposit or pet damage deposit under subsection (4) (a) does not apply if the liability of the tenant is in relation to damage and the landlord's right to claim for damage against a security deposit or a pet damage deposit has been extinguished under section 24 (2) *[landlord failure to meet start of tenancy condition report requirements]* or 36 (2) *[landlord failure to meet end of tenancy condition report requirements]*.

(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.

(7) If a landlord is entitled to retain an amount under subsection (3) or (4), a pet damage deposit may be used only for damage caused by a pet to the residential property, unless the tenant agrees otherwise.

(8) For the purposes of subsection (1) (c), the landlord must use a service method described in section 88 (c), (d) or (f) [*service of documents*] or give the deposit personally to the tenant.

It is clear based upon the landlord's direct testimony that he currently still holds both the pet damage and security deposits without permission of the tenant or the Residential Tenancy Branch. The tenant has also waived her entitlement under section 38 (6)(b). As such, the tenant has established a claim for the return of the combined \$650.00 pet damage and security deposits. The tenant is also entitled to the accrued interest to date of \$2.45 for each deposit, totalling, \$4.90. The tenant is granted a monetary order for \$654.90. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

### Conclusion

The tenant is granted a monetary order for \$654.90.

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 08, 2014

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Residential Tenancy Branch

