



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MND, MNSD, MNDC, FF

### Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties.

The Landlord filed their Application requesting a monetary order for loss of rent, for money owed or compensation under the Act or tenancy agreement, for an order to keep the security and pet damage deposits in partial satisfaction of the claim, and to recover the filing fee for the Application.

The Tenant filed for a monetary order for return of the security deposit under section 38 of the Act, and to recover the filing fee for the Application.

Only the Tenant appeared at the hearing. They gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions to me.

The Tenant testified they served the Landlord with the Notice of Hearing and their Application by registered mail, sent on October 1, 2014. Under the Act the Landlord was deemed served five days after mailing. Furthermore, as described above, the Landlord filed a claim against the Tenant on October 15, 2014, and used the Tenant's current forwarding address on the Landlord's Application, which had been provided at the end of the tenancy by the Tenant. The Landlord would have been provided with a Notice of Hearing for their own Application. For these reasons I find the Landlord knew about the time and date of the hearing. However, the Landlord did not attend the hearing and the Tenant did, therefore, I dismiss the Landlord's Application without leave to reapply.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

Is the Tenant entitled to return of the security and pet damage deposits?

Background and Evidence

This tenancy began on April 5, 2013, with the parties entering into a written, one year fixed term tenancy agreement. The Tenant paid a security deposit of \$500.00 and a pet damage deposit of \$500.00 on or about April 5, 2013 (the “deposits”), and the monthly rent was \$1,000.00, payable on the 27<sup>th</sup> day of each month.

The Tenant testified that there was an incoming condition inspection report performed at the beginning of the tenancy. The Tenant testified and submitted correspondence that at the end of the tenancy the Landlord performed the outgoing condition inspection report with a third party, but not the Tenant. The Tenant testified she attempted to have the Landlord perform the outgoing condition inspection report with her but the Landlord refused. The Tenant denied receiving a Notice of Final Opportunity to Schedule a Condition Inspection, although the Landlord submitted such a form in evidence. I note the form is incomplete as there is no suggested date or time to meet for the report set out in the spaces provided.

The Tenant testified that she and the co-tenant moved out on September 27, 2014, and provided the Landlord with their forwarding address to return the deposits to. She testified that initially the Landlord informed her that the deposits would be returned, and then following the end of the tenancy, the Landlord wanted to keep the deposits, which the Tenant did not agree to.

Analysis

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities.

Awards for compensation are provided in sections 7 and 67 of the *Act*. Accordingly, an applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;

3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

In this instance, the burden of proof is on the Tenant to prove the existence of the damage/loss and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the Landlord. Once that has been established, the Tenant must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the Tenant did everything possible to minimize the damage or losses that were incurred.

Based on all of the above, the evidence and testimony, and on a balance of probabilities, I find as follows.

I find the Tenant has proven that the Landlord has breached the *Act* by failing to return the security deposit to her. I find the Tenant has established a loss of \$1,000.00 and that she did take reasonable steps to minimize the loss.

There was no evidence to show that the Tenant had agreed, in writing, that the Landlord could retain any portion of the security deposit.

Moreover, by failing to perform the outgoing condition inspection report in accordance with the *Act* the Landlord extinguished the right to claim against the deposits, pursuant to section 36(2) of the *Act*.

Therefore, I find the Landlord has breached section 38 of the *Act*. The Landlord is in the business of renting and therefore, has a duty to abide by the laws pertaining to Residential Tenancies.

The deposits are held in trust for the Tenant by the Landlord. At no time does the Landlord have the ability to simply keep the deposits because they feel they are entitled to it or are justified to keep it.

The Landlord may only keep all or a portion of the deposits through the authority of the *Act*, such as an order from an Arbitrator, or with the written agreement of the Tenant. Here the Landlord did not have any authority under the *Act* to keep any portion of the deposits. Therefore, I find that the Landlord is not entitled to retain any portion of the deposits and must return these to the Tenant.

Furthermore, the Landlord's claim against the deposits has been dismissed as the Landlord failed to attend the hearing of their own Application.

Having made the above findings, I must Order, pursuant to sections 38 and 67 of the Act, that the Landlord pay the Tenant the sum of **\$1,050.00**, comprised of the security and pet damage deposits and the \$50.00 fee for filing this Application.

This order is final and binding on the parties, must be served on the Landlord and may be enforced in the Provincial Court.

### Conclusion

The Landlord is ordered to pay the Tenant the sum of \$1,050.00, as described above. The Tenant has shown the Landlord is in breach of the Act and the Landlord is ordered to return the deposits to the Tenant. The Tenant is granted a monetary order in this amount to serve on the Landlord and this order may be enforced in the Provincial Courts.

This decision is final and binding on the parties, except as otherwise provided under the Act, and 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: January 05, 2015

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Residential Tenancy Branch

