



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNR, MNSD, FF (Landlord's Application)  
                                 MNSD, FF (Tenant's Application)

### Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution (the "Application") made by both the Tenant on August 21, 2014, and by the Landlord on August 11, 2014. The Landlord applied to keep part of the Tenant's security and pet damage deposits (the "Deposits") and for a Monetary Order relating to unpaid rent. The Tenant applied for double the return of her Deposits, minus an amount already returned to her by the Landlord. Both parties also applied to recover the filing fee from each other.

The Tenant appeared for the hearing and testified that she had served a copy of her Application to the Landlord by registered mail. The Tenant testified that the Canada Post website indicated the Landlord had received and signed for the documents. Based on this undisputed oral evidence, I find the Tenant served the Landlord with the required documents for this hearing in accordance with Section 89(1) (c) of the *Residential Tenancy Act* (the "Act").

The Landlord failed to appear for the duration of the ten minute hearing despite being served with the hearing documents by the Tenant and being provided with the same date and time for his own Application to be heard. As the Landlord failed to appear for the hearing and prove his Application, and the Tenant appeared and was ready to proceed, I dismissed the Landlord's Application. The Tenant's affirmed testimony provided during the hearing and her documentary evidence provided prior to the hearing was carefully considered in this Decision.

### Issue(s) to be Decided

- Is the Tenant entitled to the return of her security and pet damage deposit?
- Does the doubling penalty in relation to the return of the security and pet damage apply in this case?

### Background and Evidence

The Tenant testified that this tenancy started on March 1, 2014 for a fixed term of one year which was due to end on April 30, 2015. A written tenancy agreement was completed and the Tenant paid a security deposit and a pet damage deposit of \$800.00 each on March 1, 2014. Rent was payable by the Tenant in the amount of \$1,600.00 on the third day of each month.

The Tenant testified that due to her financial situation she had to end the fixed term tenancy. The Tenant provided a written notice to the Landlord on July 3, 2014 to end the tenancy for August 15, 2014. The written notice, which was provided into written evidence, also contained the Tenant's forwarding address and stated that the Tenant was willing to move out on an earlier date if this was more suitable for the Landlord.

The Tenant testified that the Landlord managed to find new renters to rent the suite for August 1, 2014 and informed the Tenant. As a result, the Tenant vacated the suite and provided vacant possession to the Landlord on August 1, 2014.

The Tenant testified that she learnt that the tenancy for the new renters had fallen through and now the Landlords were seeking to get compensation from the Tenant for breaking the fixed term tenancy. The Tenant testified that she had not consented to any deductions from her Deposits at any point but the Landlord returned \$400.00 to her shortly after the tenancy had ended and kept the remaining \$1,200.00 without any explanation regarding this amount. The Tenant disputes the Landlord's Application.

The Tenant now seeks to recover double the amount of her Deposits for failure of the Landlord to return them in accordance with the Act.

### Analysis

I accept the undisputed evidence of the Tenant that the Landlord was provided with a forwarding address in writing on July 3, 2014. Section 38(1) of the Act states that within 15 days after the later of the date the tenancy ends, and the date the landlord received the tenant's forwarding address in writing, the landlord must make an Application to keep the tenant's deposits, repay the Deposits, or seek the Tenant's consent in writing to keep or make a deduction from the Deposits.

In this case, the Landlord had until August 15, 2014 to make an Application to keep the Tenant's Deposits. The Landlord made his Application on August 11, 2014.

As a result, I find that the Landlord made the Application within the allowable time limits provided by the Act. Based on this, it is my finding that the doubling provision related to the Tenant's security deposit does not apply in this particular case.

However, the Landlord failed to appear for the hearing and prove the reasons why the Tenant's Deposits were deducted and withheld which were disputed by the Tenant. As a result, I order the Landlord to return the Tenant's remaining Deposits forthwith in the amount of **\$1,200.00**.

As the Tenant has been successful in her Application, I also order the Landlord to pay the Tenant her filing fee for the cost of having to make the Application pursuant to Section 72(1) of the Act. Therefore, the total amount awarded to the Tenant is **\$1,250.00** (\$1,200.00 + \$50.00).

### Conclusion

The Landlord is ordered to return the remainder of the Tenant's Deposits and pay the Tenant's filing fee. The Tenant is issued with a Monetary Order pursuant to Section 67 of the Act in the amount of **\$1,250.00**. This order must be served to the Landlord and may then be filed in the Provincial Court (Small Claims) and enforced as an order of that court if the Landlord fails to make payment.

The Landlord failed to appear for the hearing. As a result, the Landlord's Application is dismissed **without** leave to re-apply.

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: March 02, 2015

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Residential Tenancy Branch

