



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes

MNSD, FF

### Introduction

This is an application by the tenant for a monetary order for return of double the security deposit and pet damage deposits (the "Deposits"), and the filing fee for the claim.

Both parties appeared, gave testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

### Issue to be Decided

Is the tenant entitled to a monetary order for return of double the security deposit?

### Background and Evidence

The parties agreed the tenancy began on July 1, 2013. Rent in the amount of \$1,200.00 was payable on the first of each month. A security deposit of \$600.00 and a pet damage deposit of \$300.00 were paid by the tenant. Tenancy ended on June 30, 2014.

The landlord agreed that he received the tenant's forwarding address on July 15, 2014. The landlord agreed that he only returned a portion of the Deposits in the amount of \$500.00. The landlord stated he did not have the tenant's permission to keep the balance, but did so because the tenant caused damage to the rental unit.

The landlord confirmed he did not make an application within 15 days of receiving the tenant's forwarding address claiming towards the Deposits and has not filed an application for damages as of today's date.

### Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find that the landlord is in breach of the Act.

There was no evidence to show that the tenant had agreed, in writing, that the landlord could retain any portion of the Deposits.

There was also no evidence to show that the landlord had applied for arbitration, within 15 days of the end of the tenancy or receipt of the forwarding address of the tenant, to retain a portion of the Deposits.

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. 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.

Section 38(6) provides that if a landlord does not comply with section 38(1), the landlord must pay the tenant double the amount of the Deposits. The legislation does not provide any flexibility on this issue.

### Conclusion

Having made the above findings, I must order, pursuant to section 38 and 67 of the Act, that the landlord pay the tenant the sum of **\$1,850.00** comprised of double the pet damage deposit (\$300.00) and security deposit (\$600.00) on the original amounts held and the \$50.00 fee for filing this Application. That above amount will be reduced by the **\$500.00** the tenant has received from the landlord.

The tenant is given a formal order for the balance due of **\$1,350.00**. The landlord must be served with a copy of this order as soon as possible. Should the landlord fail to comply with this order, the order may be filed in the small claims division of the Provincial Court and enforced as an order of that court.

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 19, 2015

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Residential Tenancy Branch

