



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes                      MNSD, FF

### Introduction

This hearing was convened by way of conference call concerning an application made by the tenant for a monetary order for return of all or part of the pet damage deposit or security deposit and to recover the filing fee from the landlord for the cost of the application.

The parties attended the hearing, gave affirmed testimony and provided evidentiary material in advance of the hearing to the Residential Tenancy Branch and to each other. The parties were given the opportunity to question each other respecting the evidence and testimony provided, all of which has been reviewed and is considered in this Decision.

No issues with respect to service or delivery of documents or evidence were raised.

### Issue(s) to be Decided

- Has the tenant established a monetary claim as against the landlord for return of all or part or double the amount of the security deposit?

### Background and Evidence

**The tenant** testified that this month-to-month tenancy began on November 1, 2014 and ended on January 28, 2015. Rent in the amount of \$800.00 per month was payable in advance on the 1<sup>st</sup> day of each month and there are no rental arrears. At the outset of the tenancy the landlord collected a security deposit from the tenant in the amount of \$400.00. The tenant had originally moved into the rental unit with another tenant, and the landlord and tenant entered into a new tenancy agreement on October 26, 2014, a copy of which has been provided. The original tenancy agreement provided for a pet damage deposit, but that was returned to the tenant before the new tenancy agreement was signed.

On January 19, 2015 the tenant emailed the landlord outlining that the tenant was moving out and the landlord agreed that if the rental unit was re-rented by February 1, 2015, the tenant wouldn't be charged rent for that month. The tenant further testified that the parties participated in a move-in and a move-out condition inspection and a copy of the reports have been provided,

which are both on the same form. The move-out portion was signed by the tenant on January 28, 2015 but the tenant did not put a forwarding address on it.

On February 13, 2015 the parties met and the tenant gave the landlord keys along with a request for return of the security deposit. The landlord had the move-in/out condition inspection report and wrote the tenant's forwarding address on the form that day. The landlord gave the tenant 2 options stating that the landlord was legally entitled to charge a full month's rent due to giving the landlord short notice, or the tenant could sign the report agreeing that the landlord could keep the \$400.00 security deposit. The tenant didn't understand it, but signed the report agreeing that the landlord could keep it thinking that it was the lesser of the 2 options, and argued with the landlord about it by email and text message. Copies of text messages and emails exchanged by the parties have been provided. The tenant went to the rental unit on January 29, 2015 and someone had started to move in.

The landlord has not served the tenant with an application for dispute resolution claiming damages or unpaid rent, and only minor damages from finishing nails and a chip in paint on a wall remained, for which the tenant offered to repair, but the landlord said it wasn't necessary.

**The landlord** testified that the rental unit was re-rented about the beginning of February, 2015.

The landlord had told the tenant that he was required to pay February's rent, and instead of paying that, the landlord would keep the security deposit. Although the landlord does not oppose the copies of emails and text messages provided for this hearing by the tenant, the landlord testified that she no longer has messages exchanged between the parties, and is concerned that there are others that have not been provided for this hearing.

The landlord didn't know exactly what the rules are respecting the security deposit and rent for February, but the tenant did not give a month's notice and the tenant agreed in writing that the landlord could keep the security deposit.

### Analysis

The *Residential Tenancy Act* states that a tenant's notice to end a tenancy must be given the day before the day in the month that rent is payable under the tenancy agreement and must be effective one month after it was given.

In this case rent was payable on the 1<sup>st</sup> day of each month and the tenant gave the landlord notice on January 19, 2015 to vacate at the end of that month and did move out. The landlord was absolutely correct when the parties discussed the security deposit on February 13, 2015; the landlord would have been able to charge the tenant for another month of rent because the tenant did not provide the landlord with a full month's notice to end the tenancy. However, the landlord would only have been successful if the landlord could establish that the landlord did whatever was reasonable to re-rent the rental unit for February 1, 2015 and was unable to do so. However, it is clear that the rental unit was re-rented in February prior to the date the

parties met on February 13, 2015. Therefore the landlord would not have been successful in obtaining a monetary order for a month of unpaid rent, and has not made any claim for damages. In the circumstances, I find that neither party knew their rights or obligations at the time and the tenant signed the move-out condition inspection report agreeing that the landlord could keep the security deposit believing it was the lesser of the 2 evils, but argued about it later.

I have reviewed the text messages provided by the tenant. I also find that the tenant knew at the time that the agreement for the landlord to keep the security deposit was signed that he was forfeiting the security deposit for failure to give a full month's notice knowing that he was incorrect in providing such short notice. Therefore I am not satisfied that the tenant has established that he was coerced into signing away the security deposit.

The *Act* states that a landlord must return a security deposit or pet damage deposit in full to a tenant within 15 days of the later of the date the tenancy ends or the date the landlord receives the tenant's forwarding address in writing, or must make an application for dispute resolution claiming against the deposit within that 15 day period, unless the tenant otherwise agrees in writing. In this case, the tenant agreed in writing the same day that the landlord received the tenant's forwarding address in writing. The tenant's application is hereby dismissed.

#### Conclusion

For the reasons set out above, the tenant's application is hereby dismissed.

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: June 26, 2015

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Residential Tenancy Branch

