



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Northern Property Real Estate Investment Trust  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNSD

### Introduction

This hearing was convened to deal with of the tenants' application for dispute resolution under the Residential Tenancy Act ("Act"). The tenants applied for a monetary order for a return of their security deposit and pet damage deposit.

The listed tenant and the landlord's agents attended, the hearing process was explained and they were given an opportunity to ask questions about the hearing process.

At the outset of the hearing, neither party raised any issues regarding service of the application or each other's evidence.

Thereafter the participants were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all evidence before me that met the requirements of the Dispute Resolution Rules of Procedure ("Rules"); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

### Issue(s) to be Decided

Are the tenants entitled a return of the remainder of their security deposit and their pet damage deposit?

### Background and Evidence

The evidence taken at the hearing showed that the tenants first moved into a rental unit supplied by the landlord in or about February 2013, for a monthly rent of \$900.00, and

that the tenants moved across the hall in the residential property shortly thereafter, to the present dispute address, for a monthly rent of \$950.00.

The tenants applied for the balance of their security deposit, pet damage deposit, and for parking charges assessed by the landlord which they claim they did not owe.

As to the tenants' security deposit, the tenant submitted that they paid \$475.00, which the landlord's agent confirmed.

As to the pet damage deposit, the tenant submitted that they paid an amount of \$475.00; however, the landlord's agent denied that they received this amount, as their records reflect that an amount of \$300.00 was paid. The landlord submitted tenant ledger sheets to support their statements.

The tenant submitted further that they had overpaid the landlord a total of \$75.00 in parking charges, when this fee should have been waived due to their disability.

In response to my question, the tenant confirmed that parking was not included in the monthly rent, and was a separate agreement. Neither party supplied a copy of their written tenancy agreement.

The tenant submitted further that they provided their written forwarding address to the landlord on May 30, 2015, on the check-out sheet on the last day of the tenancy, and that since that time, the landlord used that address to return \$410.00 from the security deposit, in mid-June, 2015, and nothing from the pet damage deposit.

In further response, the landlord's agent contended that at the end of the tenancy, the tenants had a balance owing for parking, as reflected on the tenant ledger sheets, and that they deducted the final account balance prior to returning the remaining portion to the tenants.

### Analysis

Under section 38(1) of the Act, within 15 days of the later of receiving the tenant's forwarding address in writing and the end of the tenancy, a landlord must either repay a tenant's security deposit and pet damage deposit or to file an application for dispute resolution claiming against the security deposit and/or pet damage deposit.

In the case before me, the undisputed evidence was that the tenancy ended on or about May 30, 2015, the tenants provided their written forwarding address by registered mail

on May 30, 2015, and the landlord used that address to return a portion of the two deposits; however, the landlord has provided no evidence that they filed an application for dispute resolution claiming against the tenants' security deposit or pet damage deposit.

As to the amount of the security deposit, I find the evidence was clear that the tenants paid an amount of \$475.00. As to the pet damage deposit, the tenants failed to supply proof of the amount paid; the landlord's evidence of the tenant ledger sheet shows two payments totalling \$300.00. As the tenants bear the burden of supporting their claim, in the absence of clear evidence that they paid an amount of \$475.00, I accept the landlord's documentary evidence that the total amount paid for the pet damage deposit was \$300.00.

Section 38(6) of the Act states that if a landlord fails to comply or follow the requirements of section 38(1), then the landlord must pay the tenants double the amount of their security deposit and pet damage deposit.

I therefore approve the tenants' claim for a return of their security deposit and pet damage deposit, and that this amount must be doubled.

As to the tenants' claim for a parking refund, section 1 of the Act, rent is defined as *"money paid or agreed to be paid, or value or a right given or agreed to be given, by or on behalf of a tenant to a landlord in return for the right to possess a rental unit, for the use of common areas and for services or facilities."*

As neither party supplied a copy of the written tenancy agreement, and the tenants stated that parking was a separate agreement, I cannot conclude that parking fees were a part of this tenancy, and I therefore decline to accept jurisdiction to resolve this matter.

Due to the above, I find the tenants are entitled to a total monetary award of \$1140.00, comprised of their security deposit of \$475.00, doubled to \$950.00, and their pet damage deposit of \$300.00, doubled to \$600.00, less the amount of \$410.00 previously returned to the tenants.

I grant the tenants a final, legally binding monetary order pursuant to section 67 of the Act for the amount of their monetary award of \$1140.00, which is enclosed with the tenant's Decision.

Should the landlord fail to pay the tenants this amount without delay after being served the order, the monetary order may be filed in the Provincial Court of British Columbia

(Small Claims) for enforcement as an Order of that Court. The landlord is advised that costs of such enforcement are recoverable from the landlord.

Conclusion

The tenants' application requesting a return of their security deposit and pet damage deposit, which was doubled by operation of the Act, is granted.

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: December 21, 2015

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Residential Tenancy Branch

