



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNSD, MNR, FF

### Introduction

This hearing was convened in response to applications by the landlord and the tenant.

The landlord's application is seeking orders as follows:

1. For a monetary order for unpaid utilities; and
2. To recover the cost of filing the application.

The tenant's application is seeking orders as follows:

1. Return all or part of the pet deposit; and
2. To recover the cost of filing the application.

Both parties appeared, gave affirmed 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.

### Background and Evidence

The tenancy began on November 1, 2012. Rent in the amount of \$1,600.00 was payable on the first of each month. A security deposit of \$800.00 and a pet deposit of \$800.00 were paid by the tenant. The tenancy ended on July 31, 2015. The security deposit was returned to the tenant at the end of the tenancy.

### Landlord's application

The landlord testified that the tenant did not pay any utilities for garbage, sewer, or water during their tenancy. The landlord stated these are not included in the rent. The landlord seeks to recover the amount of \$2,021.16. Filed in evidence are invoices.

The tenant testified that the garbage, sewer, and water are not show in the tenancy agreement because when the tenancy started in 2012, these items were included in the property tax. The tenant stated they are unsure of when the landlord went to a meter system; however, in 2014 the city went to a mandatory water metered system. The tenant stated that there was a discussion with the landlord in January 2015, however, there was no agreement that these were the responsibility of the tenant and it only became an issue when I was seeking the return of their pet damage deposit. The tenant stated at no time have they ever received any utility invoices from the landlord.

Filed in evidence is a copy of the City of ..., city services alert for single family water meter program, which supports the tenant's testimony.

The landlord confirmed that they did not present any copies of the utility bills to the tenant during the tenancy.

#### Tenant's application

The tenant testified that the security deposit was returned; however, the landlord did not return the pet damage deposit. The tenant stated that the landlord wanted proof that a pet damage deposit was paid which they provided the landlord with a copy of the cancelled cheque dated October 10, 2014, which it shows that cheque was cashed and cleared from their account on October 14, 2014.

The landlord testified that they did not believe the tenant paid a pet damage deposit as the tenant could not provide a receipt that a pet damage was paid. The landlord stated that asked the tenant to provide proof of payment.

#### Analysis

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

In a claim for damage or loss under the Act or tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities. In this case, both parties have the burden of proof to prove their respective claim.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

Section 7(1) of the Act states that if a landlord or tenant does not comply with the Act, regulation or tenancy agreement, the non-comply landlord or tenant must compensate the other for damage or loss that results.

Section 67 of the Act provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

#### Landlord's application

In this case, I accept the tenant's evidence over the landlord's that the utilities were originally collected under the property taxes and the tenancy agreement was silent on those utilities because of that. I find it is unreasonable for the landlord to wait from November 1, 2012 to July 31, 2015, to seek to recover unpaid utilities, if they were not included in rent. I find the tenant had the right to rely on the landlord's action that these services were included in rent.

Further, even if they were not included in rent, under section 7(2) of the Act, the party who claims compensation for loss that results from the non-complying party must do whatever is reasonable to minimize the loss. The duty to minimize the loss begins when the party entitled to claim damages becomes aware that damages are occurring. I find the landlord did not make reasonable effort to minimize the loss.

Based on the above, I dismiss the landlord's application.

#### Tenant's application

Return of security deposit and pet damage deposit is defined in Part 2 of the Act.

Return of security deposit and pet damage deposit

38 (1) Except as provided in subsection (3) or (4) (a), **within 15 days after the later of**

(a) the date the tenancy ends, and

(b) the date the landlord receives the tenant's forwarding address in writing,

the landlord **must do one of the following:**

(c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;

(d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

...

(6) If a landlord does not comply with subsection (1), the landlord

(a) may not make a claim against the security deposit or any pet damage deposit, and

(b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

The tenancy ended on July 31, 2015. The landlord immediately returned the tenants security deposit to the address provided by the tenant. However, the landlord did not believe the tenant paid a pet damage deposit and wanted proof that the tenant paid one, such as providing a receipt. I find it is not the responsibility of the tenant to provide proof of payment, such as providing a receipt or banking information. Rather, it is the landlord's responsibility to ensure they record and keep proper records of money they collect from the tenant.

In this case, the tenant paid a pet damage deposit and the landlord did not return the pet damage deposit with 15 days, nor did the landlord make an application claiming against the pet damage deposit.

I find the landlord has breached 38(1) of the Act.

The pet damage deposit is held in trust for the tenant by the landlord. At no time does the landlord have the ability to simply keep the security deposit 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 security deposit 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 deposit.

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 pet damage deposit. The legislation does not provide any flexibility on this issue.

Therefore, I must order, pursuant to section 38 of the Act, that the landlord pay the tenant the sum of \$1,650.00, comprised of double the pet damage deposit (\$800.00) on the original amount held and to recover the \$50.00 fee for filing this Application.

As the documentary evidence showed the tenant received the pet damage deposit by registered mail in September 2015, in the amount of \$800.00 and the cheque has been cashed. I find the tenant is entitled to a formal monetary order pursuant to 67 of the Act, for the balance due of \$850.00.

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. The **landlord is cautioned** that costs of such enforcement are recoverable from the landlord.

Conclusion

The landlord's application is dismissed. The tenant's application for double the pet damage deposit 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: April 12, 2016

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Residential Tenancy Branch