



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNSD, FF

### Introduction

This hearing dealt with a tenant's application for return of double the security deposit and pet damage deposit not refunded. Both parties appeared or were represented at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

The landlord pointed out that he had submitted evidence for this proceeding; however, it was largely relevant to an Application for Dispute Resolution he had recently filed against the tenant, on August 22, 2016. Since the landlord had not filed in time for the two Applications to be joined this hearing only dealt with the tenant's Application and the landlord's Application is expected to proceed as scheduled on February 27, 2017.

### Issue(s) to be Decided

Is the tenant entitled to return of doubling of the security deposit and pet damage deposit?

### Background and Evidence

The tenancy commenced on January 1, 2014 and ended February 29, 2016. The monthly rent of \$890.00 was due on the first day of every month. The landlord collected a security deposit of \$445.00 and a pet damage deposit of \$445.00.

A move-in inspection report was prepared at the start of the tenancy. The parties were in agreement that on March 1, 2016 the parties met at the property for purposes of performing the move-out inspection; however, the parties provided a different version of events as to what occurred on March 1, 2016.

The tenant testified that on March 1, 2016 she and the landlord inspected the rental unit for approximately 35 minutes and completed the inspection. The landlord did not present the move-out inspection report to her to sign and did not appear to be completing the report as they inspected the unit. The tenant offered her forwarding address to the landlord when she placed a piece of paper with her address on the countertop but the landlord stated he did not need it as he knew where she moving to. The tenant stated that she took the piece of paper with her and did not leave it on the countertop. According to the tenant, the landlord told her that he would get a hold of her soon but he did not and she tried calling him three times without success.

The landlord testified that when he met the tenant at the property on March 1, 2016 she stated she was in a hurry and had only 10 minutes to participate in the move-out inspection. The landlord also stated that he brought his copy of the inspection report with him but the tenant did not bring her copy of the inspection report with her. The landlord stated that he started the inspection in the kitchen but that took 10 minutes. At that point the tenant left and told the landlord that she would call him about another time to do the move-out inspection but she did not call. The landlord did not recall the tenant presenting him with a forwarding address on a piece of paper on March 1, 2016.

The parties provided consistent testimony that the landlord did not seek the tenant's written consent to make deductions from the deposits and the tenant did not give the landlord written authorization to make deductions. On March 15, 2016 the landlord came to her new address and gave her an envelope. Inside the envelope were \$290.00 and a copy of an inspection report the landlord had completed without her present.

As to the providing a forwarding address to the landlord, the tenant testified that on March 13, 2016 she posted her forwarding address to the window of the rental unit even though she knew the landlord's address of residence and service address was elsewhere. The tenant stated that she understood the landlord would be at the rental unit while he was having repairs made and that she felt uncomfortable going to his place of residence.

The landlord acknowledged that he found the forwarding address posted to the window of the rental unit on March 20, 2016 when he attended the property. The landlord explained that he already knew where the tenant had moved to when he went to her new house on March 15, 2016.

The landlord questioned the legality and the tenant's reason for posting her forwarding dress on the window of the rental unit. The landlord also pointed out that he may have made an error in making deductions from the deposits without the tenant's written

consent but that she also erred in not fully participating in the move-out inspection and gave her forwarding address using an address that is not his service address.

The tenant requested that she be awarded \$1,200.00, calculated as:

$$\begin{array}{r} \$890.00 \text{ paid for deposits} \\ -\$290.00 \text{ refunded on March 15, 2016} \\ = \$600.00 \\ \times 2 \\ = \$1,200.00 \end{array}$$

### Analysis

As the parties were informed during the hearing, the landlord's claims against the tenant were not issues for me to decide for this proceeding as the landlord had not made an Application for Dispute Resolution in time to be joined with the tenant's Application. Rather, the landlord's claims against the tenant are set to be heard at a later date. The purpose of this hearing was to determine whether the landlord complied with the Act with respect to handling of the security deposit and pet damage deposit and the tenant's entitlement to doubling of the deposits.

Section 36 of the Act provides that a tenant may extinguish their right to return of the security deposit and pet damage deposit if the landlord gives the tenant two opportunities to participate in the move-out inspection and the tenant fails to participate on either occasion. Section 36 of the Act also provides that a landlord loses the right to make claims against a security deposit and pet damage deposit for damage if the landlord fails to give the tenant two opportunities to participate in a move-out inspection; or, having inspected the unit with the tenant fails to prepare a move-out inspection report with the tenant. I find the landlord's submissions consistent with a suggestion that the tenant may have extinguished her right to the deposits because she did not fully participate in a move-out inspection and did not propose an alternative date to resume the inspection. Accordingly, I proceed to consider whether there is sufficient evidence to conclude the tenant extinguished her right to return of the deposits.

Both parties provided consistent testimony that the tenant did participate in a move out inspection with the landlord on March 1, 2016; however, the parties provided disputed testimony as to the length of time the tenant participated and whether inspection was completed before the tenant left and the parties were in dispute as to whether the tenant tired contacting the landlord afterward. When I turn to the move-out inspection report presented as evidence by the landlord, I note that it does not indicate that the inspection

was completed to a certain point with the tenant and then resumed by the landlord only at a later date. Further, if the landlord was of the position the tenant had extinguished her right to the security deposit and pet damage deposit; I find his actions of refunding a portion of the deposits to be inconsistent with that position. Considering I was presented with a disputed version of events orally; the move-out inspection report does not support the landlord's position; and, considering the landlord's act of refunding a portion of the deposits, I find I am not satisfied that the tenant had extinguished her right to return of the deposits as suggested by the landlord. Therefore, I proceed on the basis the landlord remained obligated to administer the security deposit and pet damage deposit in accordance with section 38 of the Act.

Section 38(1) of the Act requires the landlord to either return the security deposit and pet damage deposit to the tenant or make an Application for Dispute Resolution claiming against the security deposit within 15 days from the later of the day the tenancy ends or the date the landlord receives the tenant's forwarding address in writing. Where a landlord violates section 38(1) of the Act, the security deposit must be doubled pursuant to section 38(6) of the Act.

In this case, the landlord refunded \$290.00 to the tenant within 15 days of the tenancy ended; however, the landlord made deductions from the security deposit and pet damage deposit without written authorization of the tenant. Deductions from the security deposit or pet damage deposit may be made by the landlord in limited circumstances. Essentially, a landlord must have the tenant's written consent to make deductions or obtain authorization from an Arbitrator by filing an Application for Dispute resolution. In this case, the landlord did not obtain the tenant's written consent for deductions and did not have authorization from an Arbitrator.

In order to find the tenant entitled to doubling of the deposits, I must be satisfied that the tenant gave a forwarding address to the landlord in writing. The tenant asserted that she first presented her forwarding address to the landlord, in writing, on March 1, 2016 during the move-out inspection. However, the landlord did not recall that and in any event the tenant did not leave the forwarding address with the landlord on that date. According, I find am unsatisfied the tenant met her obligation to give a forwarding address on March 1, 2016. However, it was undisputed that the tenant posted her forwarding address to the rental unit window. The landlord acknowledged finding it on March 20, 2016. Although the tenant did not serve the landlord at his service address, the landlord did find the forwarding address and I find that enabled him to take action with respect either refunding the deposits or filing an Application for Dispute Resolution to claim against the deposits. Therefore, I deem the landlord sufficiently served with the

tenant's forwarding address on March 20, 2016 pursuant to the authority afforded me under section 71 of the Act.

Since the landlord received the tenant's forwarding address in writing on March 20, 2016 I find the landlord had 15 days to either refund the deposits to the tenant or file an Application by April 4, 2016 in order to comply with the Act. The landlord did neither. Therefore, I find the tenant entitled to doubling of the security deposit and pet damage deposit under section 38(6) of the Act.

The tenant requested an award of \$1,200.00 after taking into account the partial refund she received on March 15, 2016 and I grant her request. I further award the tenant recovery of the \$100.00 filing fee she paid for this Application.

In light of the above, I provide the tenant with a Monetary Order in the total amount of \$1,300.00 to serve and enforce upon the landlord.

#### Conclusion

The tenant has been provided a Monetary Order in the sum of \$1,300.00 to serve and enforce upon the landlord.

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: September 23, 2016

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Residential Tenancy Branch