



# 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 the tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- a monetary order for the return of double the security and pet damage deposits pursuant to section 38 and 67 of the Act;
- authorization to recover her filing fee for this application from the landlords pursuant to section 72.

Both parties attended the hearing via conference call and provided affirmed testimony. Both parties confirmed that the tenant served to the landlords the notice of hearing package via Canada Post Registered Mail on October 7, 2016.

The landlord submitted late evidence on March 25, 2017 in person to the tenant. The tenant confirmed receipt of this package. The tenant submitted late evidence on March 30, 2017 in person to the landlord. Both parties confirmed that the submitted late evidence was not relevant to the application filed, but was instead regarding alleged claims of damage by the tenant made by the landlord. As such, I accept this evidence, but find that it not relevant to the application for dispute. As both parties have attended and have confirmed receipt of the notice of hearing package, I am satisfied that both parties have been sufficiently served as per section 90 of the Act.

### Issue(s) to be Decided

Is the tenant entitled to a monetary order for return of double the security and pet damage deposits and recovery of the filing fee?

### Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

Both parties confirmed that a tenancy agreement was made that the tenancy began on December 1, 2009 and was on a month-to-month basis. Both parties agreed that the monthly rent was \$1,100.00 payable on the 1<sup>st</sup> day of each month.

The tenant seeks a monetary claim of \$2,200.00 for return of double the \$550.00 and the \$550.00 pet damage deposits. The tenant claims that the tenancy ended on November 30, 2015 and that the landlord has failed to return the combined \$1,100.00 deposits. The tenant stated that the landlord was served with her forwarding address in writing on September 8, 2016.

The tenant stated that a \$550.00 security and a \$550.00 pet damage deposits were paid to the landlord at the beginning of the tenancy.

The landlord disputes the tenant's claims that no deposits were paid.

### Analysis

Section 38 of the Act requires the landlord to either return all of a tenant's security deposit or file for dispute resolution for authorization to retain a security deposit within 15 days of the end of a tenancy or a tenant's provision of a forwarding address in writing. If that does not occur, the landlord is required to pay a monetary award pursuant to subsection 38(6) of the Act equivalent to the value of the security deposit.

The onus or burden of proof lies with the party who is making the claim. When one party provides evidence of the facts in one way and the other party provides an equally probable explanation of the facts, without other evidence to support their claim, the party making the claim has not met the burden of proof, on a balance of probabilities, and the claim fails.

In this case, the landlord has disputed that no security or pet damage deposits were paid by the tenant. The tenant was unable to provide any supporting evidence of either a security or pet damage deposit paid to the landlord. As such, I find that without any supporting evidence from the tenant, I cannot be certain if a security or pet damage

deposit was paid. As such, the tenant's application is dismissed for lack of supporting evidence.

Conclusion

The tenant's application is dismissed without leave to reapply.

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 04, 2017

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Residential Tenancy Branch