



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNSD, FF

### Introduction

On March 14, 2017, the Tenants submitted an Application for Dispute Resolution for the Landlord to return of all or part of the pet damage deposit or security deposit, and to recover the filing fee for the Application.

The Tenant K.M. and the Landlord B. W. appeared at the hearing and provided affirmed testimony.

The hearing process was explained and the parties were asked if they had any questions. The parties were provided the opportunity to present their evidence orally and in written and documentary form, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Issues to be Decided

- Are the Tenants entitled to the return of the security deposit?
- Are the Tenants entitled to recover the cost of the filing fee?

### Background and Evidence

The parties testified that the tenancy commenced on May 1, 2015, as a two year fixed term tenancy. Rent in the amount of \$2,000.00 was due on the first day of each month. The Tenants paid the Landlord a security deposit of \$1000.00 and a pet damage deposit of \$1000.00. The Parties agreed that the tenancy ended on January 15, 2017, by mutual agreement.

The Tenant testified that the Landlords did not return the security deposit or pet damage deposit after the Tenants moved out of the rental unit.

The Tenant testified that she paid the Landlord \$500.00 and permitted the Landlord to keep \$500.00 of the security deposit towards the half month of rent due for January 2017.

The Tenant testified that there was no written agreement that the Landlords could retain any other amount of the security deposit or pet damage deposit.

The Tenant testified that she provided the Landlord her forwarding address in writing on February 9, 2017, using registered mail to the address provided by the Landlord. The Tenant provided a copy of the registered mail receipt as proof of service.

In response, the Landlord testified that the parties exchanged email proposals to pay the rent using the security deposit, but no actual written agreement was reached.

The Landlord wanted to retain the security deposit because of utility costs that need to be determined, so he did not return the security deposit or pet damage deposit to the Tenant. The Landlord acknowledged that he did not return the deposits or make a claim by filing for dispute resolution within 15 days after the end of the tenancy and after receiving the Tenants' forwarding address.

### Analysis

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

Section 38 (1) of the Act states that within 15 days after the later of the date the tenancy ends, and the date the Landlord receives the Tenant's forwarding address in writing, the Landlord must repay any security deposit or pet damage deposit to the Tenant with interest calculated in accordance with the regulations, or make an application for dispute resolution claiming against the security deposit or pet damage deposit.

Residential Tenancy Policy Guideline # 17 Security Deposit and Set Off states

*If the landlord does not return or file for dispute resolution to retain the deposit within fifteen days, and does not have the tenant's agreement to keep the deposit, the landlord must pay the tenant double the amount of the deposit.*

I find that the Tenants provided their forwarding address to the Landlords on February 9, 2017. I find that the Landlords did not apply for dispute resolution within 15 days of receiving the Tenants' forwarding address.

I find that there was no written agreement between the parties that the Landlords could retain the security deposit or pet damage deposit.

I find that the Landlord's breached section 38 of the Act. Pursuant to section 38(6) of the Act, the Landlords must pay the Tenants double the amount of the security deposit and pet damage deposit.

I order the Landlords to pay the Tenants the amount of \$3,000.00. I grant the Tenants a monetary order in the amount of \$3,000.00. This monetary order may be filed in the Provincial Court (Small Claims) and enforced as an order of that court. The Landlords are cautioned that costs of such enforcement are recoverable from the Landlords.

Section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. I order the Landlord to repay the \$100.00 fee that the Tenant's paid to make application for dispute resolution.

### Conclusion

The Landlords failed to return the security deposit and pet damage deposit to the Tenants in accordance with the legislation.

The Tenants are granted double the amount of the security deposit and pet damage deposit. I grant the Tenants a monetary order in the amount of \$3,100.00.

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: May 31, 2017

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Residential Tenancy Branch