



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding CAPREIT  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes MNR, MNDC, FF, MNSD

### Introduction

This hearing dealt with applications from both the landlord and the tenant under the *Residential Tenancy Act* (the *Act*).

The landlord applied for:

- a monetary order for compensation for unpaid rent, damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The tenant applied for:

- authorization to obtain a return of all or a portion of the security deposit and pet damage deposit pursuant to section 38; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The corporate landlord was represented by its agent, DS (the “landlord”).

As both parties were in attendance I confirmed that there were no issues with service of the parties’ respective applications for dispute resolution or either party’s evidentiary materials. The parties confirmed receipt of one another’s materials. In accordance with sections 88 and 89 of the *Act*, I find that the parties were duly served with copies of their respective applications and their respective evidence.

At the outset of the hearing, the landlord made an application requesting to amend the monetary amount of the claim sought. The landlord indicated that there were arithmetic errors in the application and the actual amount being sought is \$1,405.00. As correcting math errors could be reasonably anticipated, pursuant to section 64(3)(c) of the *Act* and Rule 4.2 of the

Rules of Procedure I amend the landlord's Application to increase the landlord's monetary claim from \$1,055.00 to \$1,405.00.

### Issue(s) to be Decided

Is the landlord entitled to a monetary award for damages and loss as claimed? ? Is the tenant entitled to a monetary award equivalent to double the value of his security deposit as a result of the landlord's failure to comply with the provisions of section 38 of the *Act*? Is either party entitled to recover the filing fee for this application from the other?

### 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 claims and my findings around each are set out below.

The parties agreed on the following facts. This fixed term tenancy began in March, 2016. The monthly rent is \$1,005.00. A security deposit of \$502.50 and a pet damage deposit of \$502.50 were paid at the start of the tenancy and are still held by the landlord. Both parties participated in a condition inspection at the start and end of the tenancy.

The landlord issued a 10 Day Notice to End Tenancy for Unpaid Rent (the "10 Day Notice") on December 6, 2016. The tenant testified that she had not paid the December rent, and chose to move out rather than dispute the 10 Day Notice. The parties performed a move-out inspection on December 21, 2016. The tenant provided a forwarding address to the landlord on February 8, 2017.

The tenant testified that she believes that she is not responsible for paying the outstanding rent for December, 2016 as she vacated the rental unit in accordance with the 10 Day Notice. The tenant said that she has not given written authorization that the landlord may retain any portion of the security deposit or pet damage deposit for this tenancy.

The landlord submitted a copy of the tenancy agreement into written evidence. The tenancy agreement provides that a late fee of \$25.00 applies to rent payments paid after the first of the month. In addition, a \$25.00 pre-authorized payment fee applies for dishonored transactions. The tenancy agreement also provides that liquidated damage of \$350.00 is payable by the tenant if the fixed term tenancy is ended before the specified date.

### Analysis

Section 38 of the *Act* requires the landlord to either return the tenant's security deposit in full or file for dispute resolution for authorization to retain the deposit 15 days after the later of the end

of a tenancy or upon receipt of the tenant's forwarding address in writing. If that does not occur, the landlord must pay a monetary award, pursuant to section 38(6)(b) of the *Act*, equivalent to double the value of the security deposit. However, this provision does not apply if the landlord has obtained the tenant's written permission to keep all or a portion of the security deposit as per section 38(4)(a).

I accept the evidence of the parties that the tenant provided a forwarding address to the landlord on February 8, 2017. I accept the landlord's evidence that there is no record of a cheque being issued to the tenant returning the deposits. I accept the evidence of the parties that the tenant did not provide written authorization that the landlord may retain any portion of the security deposit or pet damage deposit. I find that the landlord's application for dispute resolution filed on February 14, 2017 seeks a relief for damages and compensation but does not make an application to keep all or a part of the security deposit and pet damage deposit.

Based on the undisputed evidence before me, I find that the landlord has not filed an application to retain the security deposit and pet damage deposit within the 15 day time limit and has failed to return the tenant's security deposit and pet damage deposit in full. I accept the tenant's evidence that they have not waived their right to obtain a payment pursuant to section 38 of the *Act* as a result of the landlord's failure to abide by the provisions of that section of the *Act*. Under these circumstances and in accordance with section 38(6) of the *Act*, I find that the tenant is entitled to a \$2,010.00 Monetary Order, double the value of the security deposit and pet damage deposit paid for this tenancy. No interest is payable over this period.

Subsection 46(4) of the *Act* provides that, if a landlord issues a notice to end a tenancy for unpaid rent, the tenant may either pay the overdue rent and utilities or file an application for dispute resolution within five days of receiving a 10 Day Notice. The tenant remains obligated to pay the outstanding rent even if the tenant accepts that the tenancy ends on the effective date of the 10 Day notice. Even if the tenant feels that the landlord is in breach of conditions of the *Act*, the regulations or the tenancy agreement the tenant remains responsible for paying the rent pursuant to section 26(1) of the *Act*.

I find that the tenant was obligated to pay the monthly rent in the amount of \$1,005.00. I accept the evidence of the parties that the tenant failed to pay the full rent for the month of December, 2016. I accept the landlord's undisputed evidence that pursuant to the terms of the tenancy agreement a late fee of \$25.00, a pre authorized payment fee of \$25.00 and liquidated damages of \$350.00 are also payable by the tenant. I accept the landlord's evidence that the total amount of arrears for this tenancy is \$1,455.00. I issue a monetary award in the landlord's favour, for unpaid rent and damages of \$1,455.00 as at June 27, 2017, the date of the hearing, pursuant to section 67 of the *Act*.

As both parties have been successful in their respective claims, I find it appropriate that each party bear their own cost of filing and issue no order for recovery of filing fees.

Conclusion

I issue a monetary order in the tenant's favour in the amount of \$555.00 under the following terms:

Item	Amount
Double Security Deposit (502.5 x 2)	\$1,005.00
Double Pet Damage Deposit (502.5 x 2)	\$1,005.00
Less Landlord's Monetary Award for Unpaid Rent and Damages	-\$1,455.00
<b>Total</b>	<b>\$555.00</b>

The landlord must be served with this Order as soon as possible. Should the landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

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: June 28, 2017

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Residential Tenancy Branch