



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes**      MNSD OLC FF

### **Introduction**

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* ("Act") for:

- authorization to obtain a return of all or a portion of their security deposit pursuant to section 38.
- an order requiring the landlord to comply with the Act, regulation or tenancy agreement pursuant to section 62; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72 of the Act.

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 landlord confirmed receipt of the tenant's dispute resolution application ('Application') and evidence. In accordance with sections 88 and 89 of the Act, I find that the landlord was duly served with the Application and evidence. The landlord did not submit any written evidence for this hearing.

### **Issues(s) to be Decided**

Is the tenant entitled to a monetary award for the return of their security deposit?

Is the tenant entitled to an order requiring the landlord to comply with the Act, regulation or tenancy agreement?

Is the tenant entitled to recover the filing fee for this application from the landlord?

### **Background and Evidence**

This fixed-term tenancy began on April 1, 2016, with monthly rent set at \$1,000.00, payable on the first of the month. The landlord had collected a security deposit and pet damage deposit in the amount of \$500.00 for each deposit at the beginning of the tenancy, which the landlord still holds. The tenant moved out prior to end of the fixed term tenancy. The tenant testified that the tenancy ended as of September 30, 2016 as she paid for September 2016 rent. The landlord testified that the tenancy ended on August 30, 2016 as the tenant gave notice on August 10,

2017 that she planned to move out at the end of August 2017. The tenant provided her forwarding address in writing to the landlord on April 24, 2017, which the landlord confirmed in the hearing.

The tenant testified that she did not receive any portion of her deposits back despite the fact she did not give permission for the landlord to retain any portion of her deposits. The landlord testified in the hearing that the tenant gave permission by email for her to retain the two deposits in satisfaction of October 2016 rent.

The landlord testified in the hearing that she had started an application to retain to tenant's deposits on September 30, 2016, but did not complete the application. The landlord testified that she had resumed her efforts to make an application on October 24, 2017, but as of the hearing date the application was still pending, and no hearing date has been scheduled.

### **Analysis**

Section 38(1) of the *Act* requires a landlord, within 15 days of the end of the tenancy or the date on which the landlord receives the tenant's forwarding address in writing, to either return the deposit or file an Application for Dispute Resolution seeking an Order allowing the landlord to retain the deposit. If the landlord fails to comply with section 38(1), then the landlord may not make a claim against the deposit, and the landlord must return the tenant's security deposit plus applicable interest and must pay the tenants a monetary award equivalent to the original value of the security deposit (section 38(6) of the *Act*). With respect to the return of the security deposit, the triggering event is the latter of the end of the tenancy or the tenant's provision of the forwarding address. Section 38(4)(a) of the *Act* also allows a landlord to retain an amount from a security or pet damage deposit if "at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant."

In this case, I find that the landlord had not returned the tenant's security deposit in full within 15 days of receipt of the tenant's forwarding address in writing. The landlord testified that the tenant had given her permission to retain the deposits, which the tenant disputes. The landlord did not provide sufficient evidence to support that she had the tenant's written permission to retain any portion of her deposits.

The landlord testified in the hearing that she had started an application for dispute resolution on September 30, 2016, but did not complete her application. The landlord testified in the hearing that she resumed her application on October 24, 2017, which is past the 15 days required by section 38(1) of the *Act*.

I find that the landlord did not provide sufficient evidence to support that she had the tenant's written permission to retain her deposits, nor did she file an application within 15 days of the end of this tenancy, or the tenant's provision of her forwarding address. In accordance with section 38 of the *Act*, I find that the tenant is therefore entitled to the return of her pet damage and

security deposits, as well as compensation equivalent to these deposits for the landlord's failure to comply with the *Act*.

As the tenant has been successful in his application, I find that the tenant is also entitled to recover the filing fee from the landlord.

As this tenancy is now over, I am dismissing the tenant's application for the landlord to comply with the *Act*, regulation, or tenancy agreement.

### **Conclusion**

I issue a \$2,100.00 Monetary Order in the tenant's favour under the following terms which allows the tenant to recover the portion of the security deposit and pet damage deposit retained by the landlord, plus a monetary award equivalent to the value of the deposits as a result of the landlord's failure to comply with the provisions of section 38 of the *Act*. The tenant is also entitled to recover the cost of the filing fee for this application.

<b>Item</b>	<b>Amount</b>
Return of Security & Pet Damage Deposit	\$1,000.00
Monetary Award for Landlords' Failure to Comply with s. 38 of the <i>Act</i>	1,000.00
Recovery of Filing Fee	100.00
<b>Total Monetary Order</b>	<b>\$2,100.00</b>

The tenant is provided with this Order in the above terms and the landlord(s) must be served with a copy of this Order as soon as possible. Should the landlord(s) 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: October 31, 2017

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Residential Tenancy Branch