



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes MNSD, MNDC, FF

### Introduction

On June 27, 2017, the Tenant 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's agent and the Landlords appeared at the hearing. The Landlords were assisted by their agent and translator. The hearing process was explained and the parties were asked if they had any questions. The parties provided affirmed testimony and 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

- Is the Tenant entitled to the return of double the security deposit?
- Is the Tenant entitled to recover the cost of the filing fee?

### Background and Evidence

The parties testified that the tenancy commenced on September 29, 2013, as a 1 year fixed term tenancy to continue thereafter as a month to month tenancy. Rent in the amount of \$1,750.00 was due by the first day of each month. The Tenant paid the Landlord a security deposit of \$825.00 and a pet damage deposit of \$825.00.

The Tenant testified that after moving out of the rental unit, the Landlords failed to return the security deposit and pet damage deposit.

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

The Tenant testified that the Landlords were provided with the Tenant's forwarding address in writing on May 4, 2017. The Tenant provided a copy of a letter dated May 4, 2017, addressed to the Landlords.

The Tenant provided a copy of an email they received from the Landlords dated April 13, 2017, where the Landlord states that after repairs to the unit, the Landlord will not be returning the deposits.

In response, the Landlords testified that they received the Tenants forwarding address in May 2017. The Landlord submitted that the Tenant left the rental unit damaged and that they retained the security deposit and pet damage deposit because of the damage.

The Landlord submitted that they believed they had the right to keep the deposit because the tenancy agreement states the Tenants take full responsibility for the misuse of products or appliances.

### Analysis

Section 5 of the Act states that Landlords and Tenants may not avoid or contract out of this Act or the regulations and that any attempt to avoid or contract out of this Act or the regulations is of no effect.

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

The Landlord's submission that the tenancy agreement authorizes them to keep the security deposit and pet damage deposit is of no effect.

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 Tenant provided a forwarding address to the Landlords on May 4, 2017. The Landlords testified that they did not apply for dispute resolution within 15 days of receiving the Tenant's forwarding address. I find that there was no agreement from the Tenant 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 Tenant double the amount of the security deposit and pet damage deposit.

If the Landlord wanted to retain the security deposit due to damage to the rental unit, the Landlord was required to apply for dispute resolution within 15 days of receiving the Tenant's forwarding address.

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

I order the Landlords to pay the Tenant the amount of \$3,400.00. I grant the Tenant a monetary order in the amount of \$3,400.00. 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.

Conclusion

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

The Tenant is granted double the amount of the security deposit and pet damage deposit. The Landlords must pay the Tenant's cost for the filing fee. I grant the Tenant a monetary order in the amount of \$3,400.00.

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: December 18, 2017

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Residential Tenancy Branch