



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNSD

### Introduction

This is an application by the tenant filed under the Residential Tenancy Act (the “Act”) for a monetary order for return of the security deposit and pet damage deposit (the “Deposits”).

The tenant and landlord MM appeared.

### Preliminary and procedural matter

At the outset of the hearing the landlord MM stated that their husband was not served with the tenant’s application and that their husband knows more about this matter.

The tenant testified that they served the landlord MM with both of their copies, in person on June 22, 2017, at their place of business.

The landlord MM agreed that they received their husband’s copy; however, it is not there responsibility to give him the copy. MM stated he did not attend the hearing because he was not served.

### **Special rules for certain documents**

**89** (1) An application for dispute resolution or a decision of the director to proceed with a review under Division 2 of Part 5, when required to be given to one party by another, must be given in one of the following ways:

- (a) by leaving a copy with the person;
- (b) if the person is a landlord, by leaving a copy with an agent of the landlord;

(c) by sending a copy by registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;

(d) if the person is a tenant, by sending a copy by registered mail to a forwarding address provided by the tenant;

(e) as ordered by the director under section 71

(1) *[director's orders: delivery and service of documents]*.

In this case, the tenant served MM with two copies of the Application for Dispute Resolution and Notice of Hearing. MM acknowledged they were received. I find both landlords were sufficiently served, If MM did not inform their husband, which I find highly unlikely, that is an issued between the landlords. I find the BM was sufficiently served in accordance with the Act.

Both parties gave testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

### Issue to be Decided

Is the tenant entitled to a monetary order for return of the Deposits?

### Background and Evidence

The tenancy began on October 15, 2015. Rent in the amount of \$650.00 was payable on the first of each month. A security deposit of \$325.00 and a pet damage deposit of \$100.00 were paid by the tenant.

The tenant testified that they vacated the premises on August 1, 2016. The tenant stated that the landlords return the amount of \$135.00, in September 2016; however, they did not give the landlords permission to retain the amount of \$290.00.

The tenant testified that they provided the landlord MM, with a written notice of their forwarding address on March 8, 2017, in person at their place of business. Filed in evidence is a copy of a letter dated March 8, 2017, which provided the tenant's forwarding address.

The landlord testified that they do not recall the tenant serving them with their forwarding address. The landlord then changed their testimony to say it was not received. The landlord stated that they retained the amount of \$290.00 for damages, which they provided the tenant a copy of the receipts when they returned the amount of \$135.00. The landlord stated they did not make an application claiming against the deposits.

The tenant testified that the landlord MM was served on March 8, 2017, between 3:00 pm and 3:30pm and that the landlord is not being truthful.

### Analysis

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

Return of security deposit and pet damage deposit is defined in Part 2 of the Act.

### **Return of security deposit and pet damage deposit**

38 (1) Except as provided in subsection (3) or (4) (a), **within 15 days after the later** of

(a) the date the tenancy ends, and

(b) the date the landlord receives the tenant's forwarding address in writing,

the landlord **must do one of the following**:

(c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;

(d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

...

(4) A landlord may retain an amount from a security deposit or a pet damage deposit if,

(a) 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, or

(b) after the end of the tenancy, the director orders that the landlord may retain the amount.

(6) If a landlord does not comply with subsection (1), the landlord

(a) may not make a claim against the security deposit or any pet damage deposit, and

(b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

In this case, I accept the evidence of the tenant over the landlord's that the landlords were provided with the tenant's forwarding address on March 8, 2017, between the hours of 3:00 pm and 3:30 pm. The tenant's evidence was clear and concise I found the landlord MM was evasive and provided conflicting testimony.

I accept the testimony of the tenant that they did not agree in writing that the landlords may retain any amount from the Deposits.

The landlords did not make an application for dispute resolution claiming against the Deposits with 15 days of receiving the tenants forwarding address.

I find the landlords have breached 38(1) of the Act.

The Deposits is held in trust for the tenant by the landlords. At no time do the landlords have the ability to simply keep the security deposit because they feel they are entitled to it or are justified to keep it.

The landlords may only keep all or a portion of the security deposit through the authority of the Act, such as an order from an Arbitrator. Here the landlord did not have any authority under the Act to keep any portion of the Deposits. Therefore, I find that the landlords was not entitled to retain any portion of the Deposits.

Section 38(6) provides that if a landlord does not comply with section 38(1), the landlord must pay the tenant double the amount of the security deposit. The legislation does not provide any flexibility on this issue.

Therefore, I must order, pursuant to section 38 of the Act, that the landlord pay the tenant the sum of \$850.00 , comprised of double the pet damage deposit (\$100.00) and

security deposit (\$325.00) on the original amounts held. That amount will be reduced by the \$135.00 returned by the landlords. ( $\$850.00 - 135.00 = \$715.00$ )

The tenant is given a formal monetary order pursuant to 67 of the Act, in the amount of **\$715.00**. The landlords must be served with a copy of this order as soon as possible. Should the landlords fail to comply with this order, the order may be filed in the small claims division of the Provincial Court and enforced as an order of that court. The **landlords are cautioned** that costs of such enforcement are recoverable from the landlords.

### Conclusion

The tenant's' application for return of the Deposits is granted. The tenant is granted a monetary order in the above noted amount.

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 14, 2017

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Residential Tenancy Branch