



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNSD, FF

### Introduction

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

- a monetary order for the return of double the security deposit pursuant to section 38 and 67 of the Act;
- authorization to recover his filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing via conference call and provided affirmed testimony. The tenant stated that the landlord was served with the notice of hearing package and a documentary evidence package via Canada Post Registered Mail on August 8, 2017. The landlord confirmed receipt of this package in his direct testimony. After some discussions, the tenant clarified that the next two additional documentary evidence package(s) were not served to the landlord, but were instead part of documents provided between the two parties prior to the application being filed. As such, I find that these two documentary evidence package(s) are excluded from consideration in this hearing as the tenant has failed to comply with section 88 of the Act for service of documents. Both parties confirmed that the tenant served the landlord with her 4th documentary evidence package (received by the RTB on January 19, 2018) via Regular Canada Post Mail. Both parties confirmed that the landlord served the tenant with his 1st documentary evidence package (received by the RTB on January 8, 2018) via Regular Canada Post Mail. The landlord claims that the tenant was served with his second documentary evidence package (received by the RTB on January 23, 2018) via Regular Canada Post Mail. The tenant disputes this claim stating that no additional evidence was received from the landlord. The landlord was unable to provide any supporting evidence for service of documents. As such, I find that the landlord's second documentary evidence package is excluded as the tenant disputes that no such

package was received and the landlord was unable to provide any supporting evidence for service. I accept the undisputed affirmed testimony from both parties regarding the service of the notice of hearing package and the confirmed documentary evidence and find that both parties have been properly served as per sections 88 and 89 of the Act.

At the outset, the tenant clarified that due to some late payments made by the landlord she wishes to amend her monetary claim by lowering the amount from \$1,250.00 to \$810.00. No objections were made by the landlord. I find that there is no prejudice to the landlord on this issue and allow the lowering of the tenant's monetary claim.

### Issue(s) to be Decided

Is the tenant entitled to a monetary order for return of double the security deposit and recovery of the filing fee?

### 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 applicant's claim and my findings are set out below.

This tenancy began on January 1, 2017 on a fixed term tenancy ending on December 31, 2017 and then thereafter on a 1 year fixed term tenancy as per the submitted copy of the signed tenancy agreement dated November 16, 2016. The monthly rent was \$1,250.00 payable on the 1<sup>st</sup> day of each month. A security deposit of \$625.00 and a pet damage deposit were paid.

The tenant seeks an amended monetary claim of \$810.00 which consists of:

|          |  |
|----------|--|
| \$185.00 | Return of Held Portion of Security Deposit   |
| \$625.00 | Compensation, Failing to Comply with Sec. 38 |

Both parties confirmed that the tenancy ended on June 27, 2018. Although the landlord argued that the tenancy ended on June 28, 2017 this is contracted by the tenant's submission of documentary evidence (a text message between parties dated June 26, 2017) to meet the next day on June 27, 2017. Both parties confirmed that the tenant provided her forwarding address in writing for the return of the security and pet damage deposits in a letter dated June 30, 2017 on June 30, 2017.

The landlord claims that he had permission from the tenant to retain the security deposit in lieu of damages (carpet cleaning charges). The tenant disputes this claim. The landlord relied upon a text message dated July 5, 2017 that he sent to the tenant explaining in part that he was holding back the security deposit due to a complaint from the new tenant over a cat smell from the carpet and the cost of cleaning it was \$185.35. The landlord argues that the tenant answered the text message with "Thank-you L." and that this constituted permission to retain the security deposit. The tenant disputed this claim.

### Analysis

Section 38 of the Act requires the landlord to either return all of a tenant's security and/or pet damage deposit(s) or file for dispute resolution for authorization to retain the security and/or pet damage deposit(s) within 15 days of the end of a tenancy or a tenant's provision of a forwarding address in writing. If that does not occur, the landlord is required to pay a monetary award pursuant to subsection 38(6) of the Act equivalent to the value of the security and/or pet damage deposit(s).

I accept the undisputed affirmed evidence of both parties and find that this tenancy ended on June 27, 2017. I also find that the tenant did provide her forwarding address in writing for the return of the security and pet damage deposits on June 30, 2017 as per the copy of the submitted letter.

On the landlord's claim that permission was granted to retain the security and pet damage deposits based upon his sent text message dated July 5, 2017 and the tenant's response of "Thank-you, L.", fails. The tenant disputes this claim. In reviewing the text message(s), I find that the context falls short of an expressed consent of the tenant to give permission to the landlord to retain the security and pet damage deposits.

The landlord argued that he held a portion of the security deposit based upon a claim of damages for cleaning the carpet and that permission was granted by the tenant. The landlord confirmed that he did not file an application to dispute returning the security deposit against a claim. Based upon the above reasons, I find that the landlord did not have the permission of the tenant to retain the security deposit. The landlord also confirmed that at no time did he apply for dispute resolution to retain the security deposit in offsetting it against a claim in damages. As such, the tenant's application is granted. The tenant has established a monetary claim of \$810.00.

The tenant having been successful is also entitled to recovery of the \$100.00 filing fee.

Conclusion

The tenant is granted a monetary order for \$910.00.

This order must be served upon the landlord. Should the landlord fail to comply with the order, the 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: January 31, 2018

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Residential Tenancy Branch