



# Dispute Resolution Services

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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*.

PK appeared as agent for the landlord, and had full authority to do so. 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.

### **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 month-to-month tenancy began on July 1, 2016, with monthly rent set at \$950.00, payable on the first of the month. The landlord had collected a security deposit and pet damage deposit in the amount of \$475.00 for each deposit at the beginning of the

tenancy, and continues to hold both deposits. The tenant moved out on April 5, 2017, and provided his forwarding address on the same date.

The tenant testified that he left the suite in reasonably clean condition, and he did not give permission for the landlord to retain any portion of his deposits.

The tenant applied for monetary compensation in the amount of \$1,900.00 for the landlord's failure to return his deposits.

The landlord's agent testified that they are entitled to keep the deposits as the tenant failed to move out by March 31, 2017. The landlord's agent also kept the deposits in order to repaint the apartment.

### **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 or pet damage deposit in full within 15 days of receipt of the tenant's forwarding address and move-out date. There is no record that the landlord applied for dispute resolution to obtain authorization to retain any portion of the tenant's security or pet damage deposit. The tenant gave sworn testimony that the landlord had not obtained his written authorization at the end of the tenancy to retain any portion of the tenant's security and pet damage deposit.

In accordance with section 38 of the *Act*, I find that the tenant is therefore entitled to the return his pet damage and security deposit, 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 \$2,000.00 Monetary Order in the tenant's favour which allows for the return of the tenant's 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*. This monetary order also allows for the tenant to recover the cost of the filing fee for this application.

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.

The remainder of the tenant's application is dismissed.

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: March 19, 2018

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Residential Tenancy Branch