



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Dispute Codes:**

Tenant: MNSD FF  
Landlord: MNSD, MNDC, MNR, FF

### **Introduction**

This hearing was convened in response to cross-applications by the parties. The tenant filed on August 23, 2017 pursuant to the *Residential Tenancy Act* (the Act) for Orders as follows:

1. An Order for return of security deposit - Section 38
2. An Order to recover the filing fee for this application - Section 72

The landlord filed on February 12, 2018 for Orders as follows;

1. A monetary Order for damage / loss – Section 67
2. An Order to retain the security deposit – Section 38
3. An Order to recover the filing fee for this application - Section 72

Both parties attended the hearing and were given an opportunity to discuss and settle their dispute, to no avail.

The landlord acknowledged receiving the application of the tenant September 11, 2017 containing the tenant's return address, which the landlord used as the tenant's address for service and forwarding address. The tenant testified they did not receive the application of the landlord although duly filed and sent to them in accordance with the Act by registered mail to their more recent address. The tenant explained that unbeknownst to the landlord they moved before the landlord filed their application as the tenant neglected to inform the landlord of their new address despite involvement in their legal matter. The tenant also acknowledged they sent the landlord their original forwarding address to the rental property contrary to the Act, but purportedly at the request of the landlord.

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

Is the landlord entitled to the monetary amounts claimed?

Is the tenant entitled to the monetary amounts claimed?

Each party bears the burden of proving their respective claims.

### **Background and Evidence**

The tenancy ended June 30, 2017. As a result of the above the landlord did not receive the tenant's original forwarding address for return of their deposits when sent by the tenant on August 02, 2017, as it was sent to the dispute/rental address. And, the tenant did not receive the landlord's application as the landlord relied on the tenant's stated address from which the tenant subsequently vacated to the current address. The tenant provided a valid forwarding address in the hearing which is reflected in the style of cause page / top page. The tenant acknowledged this is also their address for effective service. The landlord's address for service is their undisputed residential address.

#### **Tenant's application**

The tenant seeks the return of their security deposit of \$850.00 and solely half of their pet damage deposit of \$200.00 in the amount of \$100.00. The tenant acknowledged the landlord could keep \$100.00 in satisfaction of their current filing fee.

#### **Landlord's application**

The landlord seeks loss of revenue, costs for cleaning, and damages to the unit in the amount of \$3081.00

### **Analysis**

I find the tenant did not send their request for the return of their deposits in accordance with **Section 88** of the Act. However, I find the tenant ultimately included their forwarding address *in their application* for dispute resolution sent to where the landlord resides. Accordingly, I find that the Tenant's Application is dismissed with leave to reapply **if** the Landlord does not deal with the security deposit in accordance with **Section 38** of the Act. I find the Landlord to have received the tenant's forwarding address in writing **on the date of this Decision**.

I find the landlord attempted to serve the tenant with their application for dispute resolution but were unsuccessful in doing so. The Landlord must now deal with the security deposit in accordance with Section 38 of the *Act*. That is, within 15 days after the date of this Decision, the Landlord must either return the security deposit and the relevant pet damage deposit to the Tenant at the address provided by the tenant in the hearing, **or** make a claim against the security deposit by filing an application for dispute resolution at/to the Residential Tenancy Branch. Failure to do so may result in the Landlord being prevented from making a claim against the security deposit, and the Tenant being awarded double the amount of the security deposit at a future hearing. Therefore, the landlord's application is effectively dismissed, with leave to reapply.

The parties confirmed to me they respectively have the valid address for service of the other party.

As agreed by the tenant and unopposed by the landlord,

**I Order** the landlord may retain \$100.00 of the tenant's *pet damage deposit*; and, the landlord must retain the balance of the deposit in trust until such time as determined by an Arbitrator.

### **Conclusion**

The parties' respective applications are each dismissed, with leave to reapply.

**This Decision is final and binding.**

*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 13, 2018

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Residential Tenancy Branch