



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNSD, FFT

### Introduction

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

- the return of the security and pet deposits pursuant to section 38 of the *Act*; and
- the recovery of the filing fee for this application from the landlord pursuant to section 72 of the *Act*.

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.

As both parties were present, service of documents was confirmed. The parties testified that they were in receipt of each other's application and evidentiary materials. Based on the undisputed testimonies of the parties, I find that both parties were served in accordance with section 89 of the *Act*.

### Issue(s) to be Decided

Is the tenant entitled to the return of the security deposit? And if so, is the tenant entitled to any statutory compensation equivalent to the amount of the security deposit for the landlord's failure to comply with the *Act*?

Is the tenant entitled to recover the filing fee for this application?

### Background and Evidence

While I have turned my mind to the documentary evidence and the testimony presented, not all details of the submissions and arguments are reproduced here. The principal aspects of this matter and my findings are set out below.

Neither party submitted a written tenancy agreement into documentary evidence, as it had apparently been lost, however both parties agreed upon the following facts pertaining to the tenancy agreement. The tenancy began December 15, 2015 as a one-year fixed term tenancy and later converted to a month to month tenancy. The tenancy ended on June 30, 2017. Monthly rent was \$1,350.00 due on the first of the month.

The parties agreed that a security deposit of \$675.00 was paid by the tenant at the beginning of the tenancy, but the parties disagreed about the amount of pet deposit that was paid. The tenant testified that she paid \$675.00 for the security deposit and \$200.00 for the pet deposit, for a total of \$875.00 in deposits, to the landlord on November 30, 2015 via e-transfer. In support of her testimony, the tenant submitted a copy of her bank statement from the period between November 26, 2015 and December 4, 2015, which shows an e-transfer payment made on November 30, 2015 in the amount of \$875.00, but no identifying information as to the recipient of the payment is noted.

The landlord testified that according to the information she documented in a rent ledger, the tenant paid \$675.00 for the security deposit, but only \$100.00 for the pet deposit, for a total of \$775.00 in deposits. The landlord had not submitted any documentary evidence in support of her testimony. The landlord did point to an entry in the tenant's bank statement regarding a cheque cashed from the tenant's account on December 1, 2015 in the amount of \$675.00. The landlord alleged that this cheque could instead be the security deposit payment. The tenant countered the landlord's claim by stating that the cheque was payment of the ½ month of rent from December 15 – 31, 2015, which would have been in the amount of \$675.00.

Both parties agreed that a condition inspection report was done at move-in and at move-out, with the participation of both parties. The tenant stated that she did not sign the move-out condition inspection report as she disagreed with the contents of the report.

Both parties agreed that the tenant provided the landlord with her forwarding address via email communication on July 2, 2017.

The tenant denies agreeing in writing to any specific amount for carpet cleaning costs but confirmed that she stated in the email to her landlord, regarding forwarding address and deposit return, that she would allow a deduction for "the cost of carpet cleaning".

The landlord acknowledged that she did not return the tenant's security and pet deposits within 15 days of receiving the tenant's forwarding address, nor did she file an Application for Dispute Resolution with the Residential Tenancy Branch to retain the tenant's deposits due to damages and cleaning costs.

### Analysis

Both parties submitted a significant amount of photographic and documentary evidence regarding allegations pertaining to damages, deficiencies in cleaning, and other complaints related to issues between the parties during the tenancy. I explained to the parties that the only matter before me for decision at this hearing was to make a determination on the tenant's application for the return of the security deposit, and that evidence submitted in relation to the alleged damages and cleaning deficiencies was not relevant for making a determination in this matter. I informed both parties that they were both at liberty to make claims for damages in relation to the tenancy for up to two years from the end date of the tenancy.

I also informed the parties that the *Act* contains statutory provisions which can require that in certain circumstances a landlord must repay a tenant double the security deposit and/or pet damage deposit. The parties were also informed that if a tenant is entitled to doubling of the deposit, I must award the tenant double the deposit unless the tenant expressly waives entitlement. The tenant did not waive entitlement to doubling of the deposits. Accordingly, I have considered whether the tenant is entitled to return of the single amount or double the amount of their deposits in making this decision.

Both parties agreed that the amount of the security deposit originally paid by the tenant was \$675.00. However, the parties were unable to come to an agreement on the amount originally paid for the pet deposit at the beginning of the tenancy. The tenant asserted that the amount was \$200.00 and the landlord asserted that the amount was only \$100.00.

As no tenancy agreement was submitted into documentary evidence, I weighed the testimony and other documentary evidence of both parties to determine a value of the pet deposit. Based on the fact that the tenant provided a copy of her bank statement showing an entry for an e-transfer in the amount of \$875.00 at around the time the tenancy agreement was negotiated, and the landlord did not submit any documentary evidence to counter this claim, I find on a balance of probabilities, meaning that it is more likely than not, that the tenant paid \$675.00 for the security deposit and \$200.00

for the pet deposit, for a total of \$875.00 in deposits paid by the tenant and still retained by the landlord.

Both parties participated in conducting condition inspections of the rental unit at move-in and move-out, and a report was provided, as required by sections 23 and 35 of the *Act*. Therefore, I find that neither party has extinguished their rights to the deposits pursuant to sections 24 and 36 of the *Act*. As such, I must make a determination based on the provisions of section 38 of the *Act*.

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 security deposit in full 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 tenant a monetary award equivalent to the original value of the security deposit pursuant to 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 in writing. In this case, the landlord received the tenant's forwarding address via email on July 2, 2017, as agreed to by both parties.

I note that the tenant provided her forwarding address to the landlord using email, instead of through one of the acceptable methods for providing written notice as set out in section 88 of the *Act* provided below:

- 88 All documents, other than those referred to in section 89 [*special rules for certain documents*], that are required or permitted under this *Act* to be given to or served on a person must be given or served 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 ordinary mail or 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 ordinary mail or registered mail to a forwarding address provided by the tenant;

- (e) by leaving a copy at the person's residence with an adult who apparently resides with the person;
- (f) by leaving a copy in a mailbox or mail slot for the address at which the person resides or, if the person is a landlord, for the address at which the person carries on business as a landlord;
- (g) by attaching a copy to a door or other conspicuous place at the address at which the person resides or, if the person is a landlord, at the address at which the person carries on business as a landlord;
- (h) by transmitting a copy to a fax number provided as an address for service by the person to be served;
- (i) as ordered by the director under section 71 (1) [*director's orders: delivery and service of documents*];
- (j) by any other means of service prescribed in the regulations.

However, section 71(2)(c) of the *Act* allows me to determine if a document not served in accordance with section 88 of the *Act* is “sufficiently given or served for purposes of this *Act*.” Since the landlord replied to the tenant’s email messages and confirmed receipt of the address provided by the tenant, I find that landlord was sufficiently served with the tenant’s forwarding address on July 2, 2017 pursuant to section 71(2)(c) of the *Act*.

The tenant stated in an email to the landlord that she agreed to a deduction from her deposits for the “cost of carpet cleaning”, however, she did not specify an amount. Therefore, I must determine if the landlord was authorized to retain the security deposit, or a portion of it, by the tenant.

Section 38(4)(a) states, in part, as follows:

- 38(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

**[My emphasis added]**

The *Act* very explicitly references that “an amount” may be retained, and that this “amount” is agreed to in writing by the tenant.

In this case, I find that the tenant did not agree in writing to “an amount” that could be retained by the landlord from the deposits. The tenant only referenced costs for carpet

cleaning without specifying an amount that could be retained. As such, I find that the landlord was not authorized by the tenant to retain the security deposit or any portion of it.

The landlord confirmed that she did not return the security and pet deposits or file an Application for Dispute Resolution with the Residential Tenancy Branch within 15 days of receiving the tenant's forwarding address in writing.

In weighing the testimony and the evidence before me, I find that the landlord has neither applied for dispute resolution nor returned the tenant's security and pet deposits in full within the required 15 days. Further, I find that the landlord did not have the tenant's written authorization to retain "an amount" from the security and pet deposits.

Under these circumstances and in accordance with section 38(6) of the *Act*, I find that the tenant is therefore entitled to a monetary award equivalent to the value of double the security deposit withheld by the landlord, with any interest calculated on the original amount only. No interest is payable for this period.

Having been successful in this application, I find that the tenant is entitled to recover the \$100.00 filing fee paid for this application.

### Conclusion

I issue a Monetary Order in the amount of \$1,850.00 in favour of the tenant. The breakdown is as follows:

Item	Amount
Return of security and pet deposits withheld by landlord	\$875.00
Monetary award for landlord's failure to comply with s. 38 of the <i>Act</i> (equivalent to value of security and pet deposits paid)	\$875.00
Recovery of filing fee for this Application	\$100.00
<b>Total Monetary Order in Favour of Tenant</b>	<b><u>\$1,850.00</u></b>

The tenant is provided with this Order in the above terms and the landlord must be served with this Order as soon as possible. Should the landlord 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.

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: June 18, 2018

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Residential Tenancy Branch