



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNSD, FFT

### Introduction

This hearing dealt with an Application for Dispute Resolution (the “Application”) that was filed by the Tenant under the *Residential Tenancy Act* (the “Act”), seeking the return of their security deposit pet damage deposit, as well as recovery of the filing fee.

The hearing was convened by telephone conference call and was attended by the agent for the Landlord (the “Landlord’s Agent”), the Tenant, and the agent for the Tenant (the “Tenant’s Agent”), all of whom provided affirmed testimony. The parties were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

I have reviewed all evidence and testimony before me that was accepted for consideration in this matter in accordance with the Residential Tenancy Branch Rules of Procedure (the “Rules of Procedure”); however, I refer only to the relevant facts and issues in this decision.

At the request of the Tenant, copies of the decision and any order issued in his favor will be mailed to him at the address provided in the hearing. At the request of the Agent, copies of the decision will be e-mailed to the Landlord at the e-mail address provided in the hearing.

### Preliminary Matters

Although the Agent acknowledged receipt of the Tenant’s documentary evidence in accordance with the *Act* and the Rules of Procedure, the Agent acknowledged that no documentary evidence was exchanged with the Tenant in relation to this hearing. As a result, I have excluded the documentary evidence before me from the Agent and the Landlord as I find that it would be a breach of both the Rules of Procedure and the principles of natural justice to accept it for consideration in this matter as it has not been served on the Tenant as required by the *Act* and the Rules of Procedure. As a result,

the hearing proceeded based only on the documentary evidence before me from the Tenant, as well as the affirmed testimony provided by the parties in the hearing.

### Issue(s) to be Decided

Is the Tenant entitled to the return of all or a portion of their security deposit and pet damage deposit pursuant to section 38 of the *Act*?

Is the Tenant entitled to recovery of the filing fee?

### Background and Evidence

All parties agreed that the tenancy ended on August 31, 2017, and that both a security deposit and a pet damage deposit were paid at the start of the tenancy, each in the amount of \$375.00. In the hearing the parties also agreed that the Tenant's forwarding address was provided to the Landlord in writing on August 31, 2017, and that the date of September 31, 2017, listed on the document where the Tenant provided his forwarding is therefore a clerical error.

The parties agreed that a move-in inspection was completed with an agent for the Landlord and the Tenant and that a move-out condition inspection was completed with an agent for the landlord and the Tenant's Agent; however, there was a dispute between the parties about the condition of the rental unit at the move-out inspection and the validity and authenticity of the move-out condition inspection report.

The Landlord's Agent, who was not the agent present at the time of the move-out inspection, stated that the move-out condition inspection form signed by the Tenant clearly shows that cleaning was required in many areas of the rental unit and that the Landlord is entitled to retain the security deposit and the pet damage deposit; However, a copy of the move-out inspection report was not before me for consideration in this matter as it was not served on the Tenant as outlined in the preliminary matters section of this decision.

The Landlord's Agent also pointed to the document titled "RETURN OF SECURITY DEPOSIT" in the Tenant's documentary evidence which she stated clearly shows that the Tenant agreed that the Landlord was owed \$857.90 and that the Landlord could retain the \$750.00 in deposits paid by the Tenant at the start of the tenancy towards this debt. Although the Tenant agreed in the hearing that he signed the above noted form titled "RETURN OF SECURITY DEPOSIT" agreeing to the retention of his security

deposit and pet damage deposit, the Tenant's Agent argued that it should not be considered valid for the following reasons.

The Tenant's Agent stated that the initial move-out condition inspection report he signed with the agent who attended the move-out inspection on behalf of the Landlord indicated that the rental unit was in good condition and that no deductions from the security deposit or pet damage deposit were required. However, a copy of this move-out condition inspection report was not submitted for my consideration as the Tenant's Agent stated that a copy was never provided to him or the Tenant. The tenant's Agent stated that he suspects the report was never provided to him or the Tenant because shortly after it was signed, the agent advised him that it was not valid as it was not signed by the Tenant himself. The Tenant's Agent also alleged that a subsequent move-out condition inspection form was signed by the Tenant which contained different information than the one signed by him at the time of the move-out inspection; however, as stated above, a copy of this report was not accepted for my consideration in the hearing.

The Tenant's Agent stated that the Landlord is simply attempting to take advantage of an elderly tenant and argued that the form signed by the Tenant agreeing to the retention of the security deposit should be considered invalid as a previous condition inspection report was signed by him and an agent for the Landlord stating that the rental unit was in good condition and that no deductions are required. As a result, the Tenant sought the return of both the \$375.00 pet damage deposit and the \$375.00 security deposit.

### Analysis

While I appreciate the argument of the Tenant and their Agent that the document where the Tenant agrees in writing to the Landlord's retention of both the security deposit and the pet damage deposit should not be considered valid, I do not agree. Despite any events described by the Tenant's Agent preceding the signing of this document, of which there is no corroborating documentary evidence, I ultimately find that the Tenant agreed in writing that he owed the Landlord \$857.90 and that the Landlord could retain both the security deposit and the pet damage deposit in full towards this outstanding amount.

As a result, I find that the Landlord was therefore entitled to retain the Tenant's security deposit and pet damage deposit pursuant to section 38(4)(a) of the *Act* and I therefore

dismiss the Tenant's Application without leave to reapply. As The Tenant was not successful in his Application, I find that he must bear the cost of his own filing fee.

### Conclusion

The Tenant's Application is dismissed without leave to reapply.

I believe that this decision has been rendered within 30 days after the conclusion of the proceedings in accordance with section 77(1)(d) of the *Act* and section 25 of the *Interpretation Act*. In the event that this is not correct, I note that section 77(2) of the *Act* states that the director does not lose authority in a dispute resolution proceeding, nor is the validity of a decision affected, if a decision is given after the 30 day period in subsection 77(1)(d) of the *Act*.

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: August 23, 2018

---

Residential Tenancy Branch