



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes: MNSD

### **Introduction**

The tenant attended the hearing and gave sworn testimony. The landlord did not attend this hearing, although I left the teleconference hearing connection open until 2:02 p.m. in order to enable the landlord to call into this teleconference hearing scheduled for 1:30 p.m. on October 16, 2018. The tenant attended the hearing and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the tenant and I were the only ones who had called into this teleconference.

The tenant provided evidence that she had served the landlord personally with her forwarding address in writing on October 5, 2017 and with the Application for Dispute Resolution personally at 5 p.m. to her husband on the premises on July 12, 2018 who promised to give it to the landlord. She provided a note from the landlord sent to her new address and provided a note/cheque from the landlord showing a return of \$412.50 of her deposits. I find the documents were sufficiently served pursuant to section 71 of the Act for the purposes of this hearing. The tenant applies pursuant to the *Residential Tenancy Act* (the Act) for orders as follows:

- a) An Order to return double the security and pet damage deposits pursuant to Section 38.

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

Has the tenant proved on the balance of probabilities that she is entitled to the return of double the security deposit according to section 38 of the Act?

### **Background and Evidence**

The tenant attended the hearing and was given opportunity to be heard, to present evidence and make submissions. The tenant said she had paid a security deposit of

\$412.50, a pet damage deposit of \$100 and a deposit on a carbon monoxide detector of \$50 in September 2017 and commenced her tenancy on September 7, 2017. She provided proof of payment in evidence. Rent was \$825 a month. The tenant said she vacated the unit on October 1, 2017 and the landlord mailed her a cheque for \$412.50 on October 5, 2018. However, I find the evidence is that this is a bank draft which was purchased by the landlord. The landlord withheld \$150 without consent. The tenant requests double her security deposit refunded.

From the written documentation, it appears the landlord charged the tenant \$50 for cleaning the cupboard and under the Fridge and Stove. These charges among others were set out on a page dated August 5, 2017 and the landlord maintains this was permission to withhold amounts owed for items not completed. The tenant said this was just a list of possible charges done a few months before she moved but everything was cleaned; she left a couple of cans behind. The landlord apparently charged her \$50 for this but also did not refund the pet damage deposit at all. It seems she forgot about it.

On the basis of the documentary and solemnly sworn evidence presented at the hearing, a decision has been reached.

**Analysis:**

The *Residential Tenancy Act* provides:

Return of security deposit and pet damage deposit

38 (1) *Except as provided in subsection (3) or (4) (a), within 15 days after the later of*  
*(a) the date the tenancy ends, and*

*(b) the date the landlord receives the tenant's forwarding address in writing,*  
*the landlord must do one of the following:*

*(c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;*

*(d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.*

*(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, or*

*(b) after the end of the tenancy, the director orders that the landlord may retain the amount.*

*(6) If a landlord does not comply with subsection (1), the landlord*

*(a) may not make a claim against the security deposit or any pet damage deposit, and*

*(b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.*

In most situations, section 38(1) of the Act requires a landlord, within 15 days of the later 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 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 pay the tenant double the amount of the security deposit (section 38(6)).

I find the evidence of the tenant credible that she paid \$412.50 security deposit and \$100 pet damage deposit plus a \$50 carbon monoxide detector deposit at the commencement of the tenancy. I find she provided her forwarding address in writing on or about October 5, 2017 and vacated on October 1, 2017. I find she gave no permission for the landlord to retain the deposits and has not received the refund of the deposits. I find the landlord has not filed an Application to claim against the deposits. I find the tenant entitled to recover double her security and pet damage deposits but not the doubling of the carbon monoxide detector deposit as this is a deposit on an item and not covered in section 38 of the Act quoted above. Although the landlord returned \$412.50 to the tenant in October 2017, I find the tenant did not cash the bank draft as she did not agree with the landlord retaining any amounts. I find the tenant signing a form which stated routine charges for services in August 5, 2017 was not permission to retain any amount from her deposit after she vacated in October 2017. The landlord either needed to make an Application to claim it or obtain a signature on a final inspection from the tenant agreeing those specific charges were to be deducted. It appears the landlord may have forgotten about the pet damage deposit as she did not reference it in her notes; however, I find the evidence of the cancelled cheque is sufficient evidence that she paid this \$100 to the landlord.

If the tenant has not submitted the bank draft for \$412.50 payment, she should do so immediately as the evidence is the landlord purchased this bank draft so it is deducted from the monetary order in favour of the tenant..

**Conclusion:**

I find the tenant entitled to a monetary order as calculated below and to recover the filing fee for this application.

Original Security deposit	412.50
Double Security deposit	412.50

Original Pet damage deposit	100.00
Double pet damage deposit	100.00
Carbon Monoxide detector deposit	50.00
Less bank draft purchased and sent to tenant	-412.50
<b>Total Monetary Order to Tenant</b>	<b>662.50</b>

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: October 16, 2018

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Residential Tenancy Branch