



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding REMAX/LITTLE OAK REALTY  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNSD FFT

### Introduction

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

- authorization to obtain a return of all or a portion of her security deposit pursuant to section 38; and
- authorization to recover the filing fee for the application from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. The corporate landlord was represented by its agent KG (the "landlord").

As both parties were present service of documents was confirmed. The landlord confirmed receipt of the tenant's application for dispute resolution and evidentiary materials. The tenant confirmed receipt of the landlord's evidence. Based on the undisputed testimonies I find that the parties were each served with the respective materials in accordance with sections 88 and 89 of the *Act*.

### Issue(s) to be Decided

Is the tenant entitled to a return of the security deposit?  
Is the tenant entitled to recover the filing fee from the landlord?

### Background and Evidence

The parties agreed on the following facts. This periodic tenancy originally began in September, 2016. A security deposit of \$1,325.00 and pet damage deposit of \$1,325.00 were paid at the start of the tenancy and is still held by the landlord.

A co-tenant is listed on the tenancy agreement. The tenant testified that the co-tenant vacated the rental unit prior to the end of the tenancy on January 31, 2018. The tenant and landlord attended a move-out inspection, agreed to a deduction of \$179.56 from the deposits for this tenancy and signed a condition inspection report on or about January 31, 2018.

The landlord issued a cheque to the forwarding address provided by the tenant on the condition inspection report in the amount of \$2,470.44 on February 12, 2018. The cheque returning the deposits is made out to both co-tenants listed on the tenancy agreement. The tenant said that the way that the cheque is drafted, they are unable to cash the cheque without the consent of the other co-tenant.

The landlord said that they seek direction as to how the cheque returning the deposits should be drafted as the initial deposits were paid by the co-tenant.

### Analysis

Residential Tenancy Policy Guideline #13 provides the following direction in regards to co-tenants and deposits.

A security deposit or a pet damage deposit is paid in respect of a particular tenancy agreement. Regardless of who paid the deposit, any tenant who is a party to the tenancy agreement to which the deposit applies may agree in writing to allow the landlord to keep all or part of the deposit for unpaid rent or damages, or may apply for arbitration for return of the deposit.

Accordingly, I find that the tenant is empowered to agree to the deduction of the \$179.56 from the deposits and to direct the landlord how to issue return of the deposits. The tenant requests that the cheque returning the deposits for this tenancy be made out solely in the name of the tenant. I find that the tenant is authorized to make this request which the landlord must follow.

Based on the foregoing I issue a monetary order in the tenant's favour in the amount of \$2,470.44 for the return of the security and pet damage deposit for this tenancy less the agreed upon deduction in accordance with section 38 of the *Act*.

As the tenant's application succeeded the tenant is also entitled to recover the \$100.00 filing fee for this application from the landlord.

Conclusion

I issue a monetary order in the amount of \$2,570.44 in the tenant's favour.

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: September 14, 2018

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Residential Tenancy Branch