



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNSD

### Introduction

This hearing was convened by way of conference call concerning an application made by the tenant seeking a monetary order for return of all or part of the pet damage deposit or security deposit.

The tenant and the landlord attended the hearing and each gave affirmed testimony. The parties were also given the opportunity to question each other.

No issues with respect to service or delivery of evidence were raised, however the landlord offered to provide additional evidence after the hearing had concluded. The Residential Tenancy Branch Rules of Procedure require that any evidence a party wishes to rely on must be provided to the Branch and to the other party prior to the hearing. The landlord has not provided any evidentiary material prior to the hearing, and I declined to accept late evidence. All evidence of the tenant has been reviewed and is considered in this Decision.

During the course of the hearing, the parties were reminded several times to not interrupt one another, and the landlord was reminded several times to only ask the tenant questions during cross examination, but the landlord continued to argue each answer given by the tenant and to make accusations that I found were not relevant to this hearing. As a result, the parties were placed in "Lecture Mode," which is a feature of the conference calling web portal system.

### Issue(s) to be Decided

Has the tenant established a monetary claim as against the landlord for return of all or part or double the amount of the security deposit?

### Background and Evidence

**The tenant** testified that this fixed term tenancy began on October 1, 2016 and reverted to a month-to-month tenancy after a year, which ultimately ended the 3<sup>rd</sup> week of March, 2018. Rent in the amount of \$1,100.00 per month was payable on the 1<sup>st</sup> day of each month and there are no rental arrears. A written tenancy agreement exists, but a copy has not been provided as evidence for this hearing. A move-in condition inspection report was completed by the parties at the beginning of the tenancy, however the landlord had changed the locks to the rental unit and no move-out condition inspection report was completed.

The tenant further testified that at the outset of the tenancy the landlord collected a security deposit from the tenant in the amount of \$500.00, and no pet damage deposit was collected. On March 4, 2018 the tenant gave the landlord a letter personally which contained his forwarding address, but the landlord refused to accept it, and during the tenancy threw documents in the tenant's face and was impossible to deal with. The tenant put the letter containing his forwarding address in the landlord's mailbox that day. Several letters addressed to the landlord have been provided as evidence for this hearing, including a notice to end the tenancy effective March 31, 2018 and a letter dated March 4, 2018 which contains the tenant's forwarding address.

The landlord has not repaid any portion of the security deposit and has not served the tenant with an Application for Dispute Resolution claiming against the deposit. The tenant applies for a monetary order of \$1,000.00, being double the amount of the security deposit collected by the landlord.

**The landlord** testified that the tenant is incorrect; the tenancy term was fixed until June 30, 2017 and then reverted to a month-to-month tenancy. Also, rent was \$1,000.00 per month and the security deposit collected by the landlord was \$500.00.

The landlord gave the tenant a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities on February 5, 2018. The tenant disputed it, then told the landlord he was moving out. He did not pay any rent for March or the utilities. The landlord did not make an Application for Dispute Resolution and just wanted him gone.

The parties had been to dispute resolution on March 5, 2018. The tenant claimed that the \$50.00 per month increase was illegal, however the Arbitrator said it was not illegal because the tenant agreed in writing.

The landlord further testified that the *Residential Tenancy Act* says that the landlord can keep the security deposit if there's unpaid rent or utilities, although the landlord does not have access to the *Act*.

The rental unit was re-rented for August 1, 2018 after numerous repairs were made.

### Analysis

The landlord testified that she did not have access to the *Residential Tenancy Act*, but that it says a landlord can keep a security deposit if rent or utilities are unpaid. That is not the case, and for the benefit of the parties, Section 38 is set out at the end of this Decision. Specifically, it states that a landlord has 15 days from the later of the date the tenancy ends or the date the landlord receives the tenant's forwarding address in writing to either return the security deposit or pet damage deposit to a tenant in full or to make an Application for Dispute Resolution claiming against the deposit(s). If the landlord fails to do either within that 15 day period, the landlord must repay the tenant double the amount. I have no discretion in that regard, even if there's unpaid rent or utilities or damages.

In this case, the parties agree that the security deposit was \$500.00.

I have read all of the evidentiary material of the tenant, including written notice to end the tenancy, and I find that the tenancy ended on March 31, 2018. The tenant testified that he gave the landlord a letter containing his forwarding address on March 4, 2018 but the landlord refused to accept it. He also placed it in the landlord's mailbox. The landlord disputes that she received it, but did not dispute the tenant's testimony that he provided it and she refused to take it. The tenant also testified that other documents he attempted to serve on the landlord were thrown back at him. The tenant has provided several letters addressed to the landlord, some of which request repairs, and the landlord didn't dispute that. I accept the testimony of the tenant and I find that the landlord received the tenant's forwarding address in writing on March 4, 2018.

The landlord did not return any portion of the security deposit and did not make an Application for Dispute Resolution, and therefore I find that the tenant has established a monetary claim for double the amount, or \$1,000.00.

### Conclusion

For the reasons set out above, I hereby grant a monetary order in favour of the tenant as against the landlord pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$1,000.00.

This order is final and binding and may be enforced.

### ***Residential Tenancy Act***

#### **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.

(2) Subsection (1) does not apply if the tenant's right to the return of a security deposit or a pet damage deposit has been extinguished under section 24 (1) *[tenant fails to participate in start of tenancy inspection]* or 36 (1) *[tenant fails to participate in end of tenancy inspection]*.

(3) A landlord may retain from a security deposit or a pet damage deposit an amount that

- (a) the director has previously ordered the tenant to pay to the landlord, and
- (b) at the end of the tenancy remains unpaid.

(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.

(5) The right of a landlord to retain all or part of a security deposit or pet damage deposit under subsection (4) (a) does not apply if the liability of the tenant is in relation to damage and the landlord's right to claim for damage against a security deposit or a pet damage deposit has been extinguished under section 24 (2) *[landlord failure to meet start of tenancy condition report requirements]* or 36 (2) *[landlord failure to meet end of tenancy condition report requirements]*.

- (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.
- (7) If a landlord is entitled to retain an amount under subsection (3) or (4), a pet damage deposit may be used only for damage caused by a pet to the residential property, unless the tenant agrees otherwise.
- (8) For the purposes of subsection (1) (c), the landlord must repay a deposit
  - (a) in the same way as a document may be served under section 88 (c), (d) or (f) [*service of documents*],
  - (b) by giving the deposit personally to the tenant, or
  - (c) by using any form of electronic
    - (i) payment to the tenant, or
    - (ii) transfer of funds to the tenant.

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 04, 2018

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Residential Tenancy Branch