



# Dispute Resolution Services

Page: 1

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:

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

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. The tenant was assisted by their family member.

As both parties were in attendance service was confirmed. The landlord confirmed receipt of the tenant's application for dispute resolution and materials. The tenant confirmed receipt of the landlord's evidence. Based on the undisputed evidence 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 monetary award equivalent to double the value of their security deposit as a result of the landlord's failure to comply with the provisions of section 38 of the *Act*?

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

### Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here. The principal aspects of the tenant's claims and my findings around each are set out below.

This tenancy began in May, 2016 and ended in August, 2018. The monthly rent as provided on the written tenancy agreement submitted into evidence was \$700.00. The tenant was also responsible for paying the utilities for the rental suite. The tenant testified that she paid \$800.00 each month for rent and utilities. The tenant paid a security deposit of \$300.00 and pet damage deposit of \$100.00. The tenant did not participate in either a move-in or move-out condition inspection.

The landlord testified that the tenant was provided an opportunity to participate in a move-in inspection but the tenant felt it could be postponed until a later date. The landlord submits that the tenant did not participate in a move-in inspection and the landlord completed the condition inspection report without the tenant.

The landlord testified that the tenant was in attendance during the move-out inspection but left before the inspection was completed. The landlord said that the move-out condition inspection report was completed without the tenant. A copy of the condition inspection report dated August 26, 2018 was submitted into written evidence.

The tenant disputes that the landlord provided them an opportunity to participate in either the move-in or move-out inspection. The tenant submits that the landlord likely prepared the condition inspection report for this dispute resolution application as they were not provided earlier.

The tenant provided a forwarding address to the landlord by letter dated September 17, 2018. The tenant testified that they did not authorize the landlord to deduct any amount from the deposits for this tenancy.

### Analysis

As the parties gave contradictory evidence regarding the condition inspection reports for this tenancy I must first turn to a question of credibility. Taken in its entirety I find the landlord to be a more credible witness than the tenant. The tenant's primary evidence consisted of a rehearsed written statement they read aloud. The statement consisted of unsupported accusations against the landlord, conjecture about the veracity of the landlord's evidence, and focus on issues irrelevant to the present application. The tenant was evasive in responding to questions. I found the landlord to be far more credible, presenting consistent testimony that was supported by documentary evidence.

Section 24(1) provides that the right of a tenant to the return of the security and pet damage deposit is extinguished if the tenant has not participated in an inspection at the start of the tenancy after the landlord has provided 2 opportunities for an inspection.

I accept the landlord's evidence that the tenant was provided with multiple opportunities to participate in an inspection at the start of the tenancy. While the landlord did not submit into documentary evidence a notice providing an opportunity for a second inspection, I find that the testimony of the landlord to be sufficient evidence that the tenant was invited to participate in an inspection. I accept the undisputed evidence of the parties that the tenant did not participate in an inspection.

I find that the tenant has extinguished their right to claim a return of the security and pet damage deposit for this tenancy. Accordingly, I dismiss the tenant's application. The landlord is authorized to retain the full amount of the security and pet damage deposit for this tenancy.

### Conclusion

The tenant's application is dismissed without leave to reapply.

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: November 15, 2018

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Residential Tenancy Branch