



# Dispute Resolution Services

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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:

- the return of the security deposit pursuant to section 38 of the *Act*; and
- recovery of the filing fee for this application from the landlord pursuant to section 72 of the *Act*.

The tenant attended at the date and time set for the hearing of this matter. The landlord did not attend this hearing, although I left the teleconference hearing connection open until 2:00 p.m. in order to enable the landlord to call into this teleconference hearing scheduled for 1:30 p.m. 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.

As only the tenant attended the hearing, I asked the tenant to confirm that she had served the landlord with the Notice of Dispute Resolution Proceeding for this hearing. The tenant testified that she served the landlord with the notice of this hearing by Canada Post registered mail on August 25, 2018 and provided a Canada Post registered mail tracking number as proof of service, which I have noted on the cover sheet of this decision. On August 29, 2018, the tenant applied for an Amendment to her original Application for Dispute Resolution and testified that she also served the landlord with the Amendment to her Application by Canada Post registered mail on August 30, 2018 and provided a registered mail tracking number as proof of service, which I have noted on the cover sheet of this decision.

During the hearing, with the agreement of the tenant, I accessed the Canada Post website to confirm that both packages were delivered. As the tenant did not have a written tenancy agreement, I asked the tenant to explain what address for service she used for the landlord. The tenant testified that she sent the packages to the landlord at the address provided on the cheque sent to her from the landlord dated November 2, 2016, a copy of which the tenant submitted into documentary evidence.

As such, based on the testimony of the tenant, I find that the landlord was served with the notice of this hearing and the tenant's Amendment application in accordance with sections 88 and 89 of the *Act*.

#### Issue(s) to be Decided

Is the tenant entitled to the return of the security deposit? And if so, is the tenant entitled to statutory compensation equivalent to the value of the security deposit pursuant to section 38 of the *Act*?

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

#### Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony presented, not all details of the submissions and arguments are reproduced here. Only the aspects of this matter relevant to my findings and the decision are set out below.

The tenant testified that there was no written tenancy agreement, only a verbal agreement. The tenant provided the following testimony pertaining to the verbal tenancy agreement:

- This month-to-month tenancy began on or around October 26, 2015.
- Monthly rent of \$1,100.00 was payable on the first of the month.
- The tenant paid a \$550.00 security deposit and a \$300.00 pet damage deposit at the beginning of the tenancy. In support of her testimony, the tenant submitted a hand-written receipt dated October 14, 2015 and signed by the landlord's agent confirming that these amounts were paid by the tenant.
- Although the tenant participated in a condition inspection walk-through with the landlord's agent at move in and move out, the tenant was never provided with a written condition inspection report by the landlord.
- The tenant moved out and ended the tenancy on October 1, 2016.

The tenant testified that on October 1, 2016 she sent the landlord a letter by regular Canada Post mail with her forwarding address, and requested the return of her security and pet damage deposits.

The tenant testified that several weeks after sending the landlord the letter with her forwarding address, when she did not get a response to her letter, she contacted the landlord by telephone and spoke with him about the return of her deposits. In a couple of days, the tenant received a cheque in the mail from the landlord for \$550.00 for the return of the security deposit only. The cheque was dated November 2, 2016. The tenant submitted a copy of the cheque into documentary evidence. The tenant testified that she did not cash the cheque, and still holds the cheque, because it was not for the return of the full amount of her security and pet damage deposits.

The tenant testified that she never agreed in writing to allow the landlord to deduct all or a portion of the security deposit.

The tenant's application is seeking the return of the full amount of her security and pet damage deposits, totalling \$850.00, and statutory compensation equivalent to the amount of the deposits due to the landlord's failure to address both deposits in accordance with the *Act*.

### Analysis

The *Act* contains comprehensive provisions on dealing with security and/or pet damage deposits. Under section 38 of the *Act*, the landlord is required to handle the security and/or pet damage deposit as follows:

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.

At no time does the landlord have the ability to simply keep all or a portion of the security and/or pet damage deposit because they feel they are entitled to it due to damages caused by the tenant. If the landlord and the tenant are unable to agree to the repayment of the security and/or pet damage deposit or to deductions to be made to it, the landlord must file an Application for Dispute Resolution within 15 days of the end of the tenancy or receipt of the forwarding address, whichever is later.

Further, I note that in this matter, based on the tenant's testimony, the landlord extinguished his right to claim against the security and pet damage deposits for damage to the rental unit by failing to provide a written condition inspection report to the tenant at the start of the tenancy. This extinguishment is explained in section 24(2) as follows:

24 (2) The right of a landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord

(a) does not comply with section 23 (3) [2 opportunities for inspection]

(b) having complied with section 23 (3), does not participate on either occasion, or

(c) does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.

Therefore, the landlord had no right to make a claim against the security and pet damage deposits for damage to the rental unit and was required to return the deposits to the tenant within 15 days of the end of the tenancy, and once he received the tenant's forwarding address in writing.

In this matter, the tenancy ended on October 1, 2016. The tenant testified that she mailed the landlord her forwarding address on October 1, 2016. Therefore, I refer to section 90 of the *Act* which provides that a document served by mail is deemed received on the fifth day after it is mailed. As such, I find that the landlord was deemed in receipt of the tenant's forwarding address on October 6, 2016, the fifth day after mailing.

Therefore, the landlord had 15 days from October 6, 2016, to address the security and pet damage deposits in accordance with the *Act*. The tenant testified that the landlord returned only the security deposit to her via a cheque dated November 2, 2016, which is beyond the 15 days allowed under the *Act*. The tenant testified that she did not cash the cheque as the cheque was not for the full amount of her deposits. Therefore, the full amount of the tenant's security and pet damage deposits is still held by the landlord.

The tenant confirmed that she did not provide the landlord with any authorization, in writing, for the landlord to retain any portion of the security and/or pet damage deposit.

The landlord may only keep all or a portion of the security and/or pet damage deposits through the authority of the *Act*, such as an order from an Arbitrator, or with the written agreement of the tenant. In this matter, I find that the landlord did not have any authority under the *Act* to keep any portion of the deposits.

Based on the above legislative provisions and the testimony and evidence before me, on a balance of probabilities, I find that the landlord failed to address the security and pet damage deposits in compliance with the *Act*. As such, in accordance with section 38(6) of the *Act*, I find that the tenant is entitled to a monetary award of \$1,700.00, which is equivalent to double the value of the security and pet damage deposits paid by the tenant at the beginning of the tenancy, with any interest calculated on the original amount only. No interest is payable for this period.

As the tenant was successful in this application, I find that the tenant is entitled to recover the \$100.00 filing fee paid for this application from the landlord.

In summary, I order that the landlord pay the tenant the sum of **\$1,800.00** in full satisfaction of compensation to the tenant for failing to comply with section 38 of the *Act*, and recovery of the filing fee paid by the tenant for this application.

Conclusion

I issue a Monetary Order in the tenant's favour in the amount of \$1,800.00 pursuant to sections 38, 67 and 72 of the *Act*.

The tenant is provided with this Order in the above terms and 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: December 18, 2018

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Residential Tenancy Branch