



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNSD, FF

### Introduction

On October 23, 2018, the Tenant submitted an Application for Dispute Resolution under the *Residential Tenancy Act* (“the Act”) for the Landlord to return of all or part of the pet damage deposit or security deposit, and to recover the filing fee for the Application.

The Tenant and Landlord appeared at the hearing. The hearing process was explained and the participants were asked if they had any questions. Both parties provided affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Preliminary and Procedural Matters

Both parties testified that they did not receive the documentary evidence from the other party. Both parties testified that they served the documents to the other party using registered mail.

The documentary evidence submitted by each party contained email exchanges from each other, a copy of a notice to end tenancy, and a copy of the tenancy agreement. The parties acknowledged that they had exchanged these documents during the tenancy. Since both parties are aware of these documents, and have exchanged them during the tenancy, I find that there is no prejudice to either party by accepting this evidence and considering these documents in making this decision.

### Issues to be Decided

- Is the Tenant entitled to the return of double the amount of the security deposit?
- Is the Tenant entitled to recover the cost of the filing fee?

### Background and Evidence

The parties testified that the tenancy began in October 2010, and ended on August 4, 2017. Rent in the amount of \$1,100.00 was due by the first day of each month. The Tenant paid the Landlord a security deposit of \$950.00.

The Tenant testified that the Landlord did not return the security deposit to her after the Tenant moved out of the rental unit and after she provided her forwarding address in writing.

The Tenant testified that there was no agreement that the Landlord could retain any amount of the security deposit. The Tenant testified that she provided her forwarding address to the Landlord on August 29, 2017. The Tenant provided a copy of an email dated August 29, 2019, where she provided her forwarding address.

The Tenant testified that the Landlord did not return any amount of the \$950.00 deposit.

The Tenant testified that the Landlord did not arrange for a move out inspection by proposing a date and time. She testified that the Landlord suggested they meet at 6:00 am; however, that was too early and the Tenant did not agree. The Tenant testified that she did not receive a notice of final opportunity for an inspection from the Landlord.

The Tenant is seeking the amount of \$1,900.00 for double the amount of the security deposit.

In reply, the Landlord provided testimony acknowledging that he received the Tenant's forwarding address and he did not return the security deposit to the Tenant within 15 days of receiving the Tenant's forwarding address. The Landlord submitted that he kept the security deposit because he believes the Tenant is responsible for damage to the rental unit.

The Landlord did not make application for dispute resolution making a claim to keep the security deposit.

The Landlord testified that the parties reached an agreement to meet for an inspection at 10:00 am on August 4, 2017. The Landlord provided email exchanges regarding the move out inspection. An email dated August 4, 2017, at 8:20 am sent to the Tenant contains the following:

*“please let me know if you wish to conduct the walk through or final inspection as soon as possible. If I don’t hear from you before 12 pm on August 4, 2017 I will assume you have decided to waive the walkthrough...”*

There is no evidence from the Landlord in support of his submission that the parties reached an agreement to meet on August 4, 2017, at 10:00 am. The Landlord provided testimony that there was no notice of final opportunity issued to the Tenant.

### Analysis

Sections 23 and 35 of the Act states that a Landlord and Tenant together must inspect the condition of the rental unit on the day the Tenant is entitled to possession of the rental unit, and at the end of the tenancy before a new tenant begins to occupy the rental unit.

Section 17 of the Residential Tenancy Regulation provides that the Landlord must offer the Tenant a first opportunity to schedule the inspection by proposing one or more dates and times. If the Tenant is not available the Landlord must propose a second opportunity by providing the Tenant with a Notice.

Section 24 of the Act provides that the right of the Tenant to the return of a security deposit is extinguished if the Landlord has offered two opportunities for inspection and the Tenant has not participated on either occasion.

Section 38 (1) of the Act states that within 15 days after the later of the date the tenancy ends, and the date the Landlord receives the Tenant's forwarding address in writing, the Landlord must repay any security deposit or pet damage deposit to the Tenant with interest calculated in accordance with the regulations, or make an application for dispute resolution claiming against the security deposit or pet damage deposit.

Residential Tenancy Policy Guideline # 17 Security Deposit and Set Off states

*If the landlord does not return or file for dispute resolution to retain the deposit within fifteen days, and does not have the tenant’s agreement to keep the deposit, the landlord must pay the tenant double the amount of the deposit.*

Based on the evidence and testimony before me, and on a balance of probabilities, I find as follows:

I find that the Landlord failed to return the security deposit or apply for dispute resolution within 15 days of receiving the Tenants forwarding address. I find that there was no agreement from the Tenant that the Landlords could retain the security deposit.

I find that there is insufficient evidence from the Landlord to support his submission that the parties agreed to meet for an inspection at 10:00 am on August 4, 2017. While the Landlord may have made this proposal, the evidence suggests that the Tenant did not accept. Approximately four hours later the Landlord assumed the Tenant was not interested in conducting a final inspection.

I find that the Landlord made a last minute attempt to arrange a move out inspection; however, the Landlord did not propose a second opportunity and provide the Tenant with a Notice. I find that the Tenant did not extinguish her right to the return of the security deposit.

I find that the Landlord breached section 38 of the Act. Pursuant to section 38(6) of the Act, the Landlord must pay the Tenant double the amount of the security deposit.

I order the Landlord to pay the Tenant the amount of \$1,900.00.

Section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. I order the Landlord to repay the \$100.00 fee that the Tenant paid to make application for dispute resolution.

I grant the Tenant a monetary order in the amount of \$2,000.00. This monetary order may be filed in the Provincial Court (Small Claims) and enforced as an order of that court. The Landlord is cautioned that costs of such enforcement are recoverable from the Landlord.

### Conclusion

The Landlord failed to return the security deposit to the Tenant in accordance with the legislation.

The Tenant is granted double the amount of the security deposit. I grant the Tenant a monetary order in the amount of \$2,000.00.

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: January 25, 2019

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Residential Tenancy Branch