



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNSD, FF

### Introduction

This hearing was convened in response to an application by the Tenant pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. An Order for return of double the security and pet deposit - Section 38; and
2. An Order to recover the filing fee for this application - Section 72.

The Landlord’s Agent and Tenant were each given full opportunity under oath to be heard, to present evidence and to make submissions.

### Issue(s) to be Decided

Is the Tenant entitled to return of double the security and pet deposit?

Is the Tenant entitled to recovery of the filing fee?

### Background and Evidence

The following are agreed facts: The tenancy started on July 31, 2015 and ended on June 30, 2018. Rent of \$5,700.00 was initially payable on the first day of each month and by the end of the tenancy the rent had increased to \$5,850.00. At the outset of the tenancy the Landlord collected \$2,850.00 as a security deposit and \$2,850.00 as a pet deposit. The Parties mutually conducted both a move in and move-out inspection with completed reports copied to the Tenant. The Landlord’s Agent (the “Agent”) received the Tenant’s forwarding address no later than July 12, 2018. The Landlord’s daughter

returned \$3,616.00 to the Tenant shortly thereafter and although an application was made to claim against the security deposit this application was subsequently cancelled.

The Agent states that the Landlord became deceased during the tenancy. The Agent states that there was no will and that an administrator for the estate has not yet been confirmed by the courts. The Agent states that the Tenant and the Landlord's daughter came to an agreement on the security deposit. The Agent states that the Tenant took advantage of the daughter. The Agent states that it is unknown whether the Tenant signed any written agreement for the Landlord to withhold any portion of the security and pet deposit. The Tenant states that at no time was any agreement made for the Landlord to retain any portion of the security and pet deposit.

The Agent states that the Tenant's evidence package was only received by the Agent a few days before the hearing and that the package included false evidence. The Tenant states that he provided evidence in response to the Landlord's evidence as the Tenant believed that the Landlord was making serious allegations against the Tenant.

### Analysis

Section 38(4)(a) of the Act provides that a landlord may retain an amount from a security deposit or a pet damage deposit if 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. There is no supporting evidence of any written agreement by the Tenant upon which the Landlord could retain any amount of the security and pet deposit and the Tenant's evidence that no such agreement was made holds a ring of truth. As such I find on a balance of probabilities that there was no written agreement authorizing the Landlord to retain any amount of money from the security or pet deposit.

Section 38 of the Act provides 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 the security deposit or make an application for dispute resolution

claiming against the security deposit. Where a Landlord fails to comply with this section, the landlord must pay the tenant double the amount of the security deposit. As the Parties gave oral evidence with the salient and relevant facts being agreed upon and set out above, I consider the Landlord's objection to the Tenant's documentary rebuttal evidence to be irrelevant. Nonetheless, given the Landlord's objection I exclude the Tenant's documentary evidence sent in reply to the Landlord's evidence from any consideration of the Tenant's claim for return of double the security and pet deposit.

Based on the agreed facts that the Landlord received the Tenant's forwarding address no later than July 12, 2018 and as this date falls after the end of the tenancy, I find that the Landlord had 15 days from this date to return the full security deposit or make a claim against the security deposit. Although the Landlord made an application to claim against the Tenant, this application was cancelled and as a result I find that in effect the Landlord made no application to claim against the security deposit. As the Landlord failed to make an application for dispute resolution claiming against the security deposit and failed to return the full combined pet and security deposit within 15 days of receipt of the Tenant's forwarding address, I find that the Landlord is now required to pay the Tenant double the combined pet and security deposit plus zero interest in the amount of **\$11,400.00** ( $\$2,850.00 + 2,850.00 \times 2$ ).

Deducting the **\$3,616.00** already returned leaves **\$7,784.00** ( $\$11,400.00 - 3,616.00$ ). As the Tenant has been successful with its application I find that the Tenant is also entitled to recovery of the **\$100.00** filing fee for a total monetary entitlement of **\$7,884.00**.

### Conclusion

I grant the Tenant an order under Section 67 of the Act for **\$7,884.00**. If necessary, this order may be filed in the Small Claims 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: February 26, 2019

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Residential Tenancy Branch