



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNSD, FFT

### Introduction

On November 20, 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 Matter was scheduled as a teleconference hearing. The Tenant and Landlord appeared at the hearing.

The hearing process was explained and the parties were asked if they had any questions. The parties provided affirmed testimony and were provided the opportunity to present evidence orally and in written and documentary form, 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

The Landlord testified that he did not provide the Tenant with a copy of his documentary evidence. The Landlord was not aware of the requirement to do so. Since it would not be fair to consider evidence that was not disclosed to the Tenant, the Landlord’s evidence was excluded from the hearing.

### Issues to be Decided

- Is the Tenant entitled to the return of the security deposit and or pet damage deposit?
- Is the Tenant entitled to recover the cost of the filing fee?

### Background and Evidence

The Tenant and Landlord testified that the tenancy began on October 28, 2014, and ended on July 1, 2018. Rent in the amount of \$975.00 was due by the first day of each month. The tenancy ended on June 30, 2018.

The Tenant testified that she could not recall the exact amount but believes she paid the Landlord a security deposit of half a month's rent. The Tenant also testified that she paid a pet damage deposit of \$200.00 to the Landlord.

In reply, the Landlord testified that he received a \$500.00 security deposit from the Tenant. The Landlord testified that the Tenant offered to pay a pet damage deposit, but the Landlord declined her offer. The Landlord testified that he never received a pet damage deposit. The Landlord testified that the Tenant did have pets.

The Landlord provided a copy of a tenancy agreement; however, the parties could not agree on the validity of the contents of the agreement regarding payment of a security deposit or pet damage deposit; and since the Landlord never served a copy of the tenancy agreement to the Tenant, the agreement was not considered.

The Tenant testified that the Landlord did not return the security deposit or pet damage deposit 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 or pet damage deposit.

The Tenant testified that the Tenant provided the Landlord with her forwarding address two weeks after she moved out. She testified that the Landlord relied on her new address and sent her a letter stating that he was keeping the damage deposit.

The Tenant submitted that she is only seeking the return of the original deposits and in waiving her right to have the deposit(s) doubled as a penalty.

In reply, the Landlord testified that he did not have an agreement from the Tenant to keep the security deposit and he did not apply for dispute resolution to make a claim

against the security deposit. The Landlord testified that he retained the security deposit because he believed he had a rightful claim for cleaning and damage costs.

### Analysis

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

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.*

The person making an application bears the burden of proof. An application for Dispute Resolution provides information to the applicant. The application provides that it is important to provide evidence to support your position with regard to the claims being made.

There is insufficient evidence from the Tenant to establish that she paid the Landlord a pet damage deposit. The Tenant did not provide any documentary evidence that a pet damage deposit was paid. When parties provide equally believable but opposing testimony on an issue the burden of proof rests with the applicant. The Tenant's claim for the return of a pet damage deposit fails and is dismissed.

The Tenant did not provide any documentary evidence to support her testimony on the amount of security deposit that was paid to the Landlord; however, the Landlord testified that he received a \$500.00 security deposit from the Tenant. Based on this affirmed testimony, I find that the Landlord received a \$500.00 security deposit from the Tenant.

I find that the Tenant provided her forwarding address to the Landlord on July 15, 2018, and the Landlord failed to return the security deposit or make an application to keep it within 15 days. I find that there was no agreement from the Tenant that the Landlord could retain the security deposit.

I find that the Landlord's 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. The Tenant waived her right to have the security deposit doubled. I order the Landlord to pay the Tenant the amount of \$500.00.

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 the application for dispute resolution.

I grant the Tenant a monetary order in the amount of \$600.00. 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 Act.

The Tenant is granted the return of the security deposit and the cost of the filing fee. I grant the Tenant a monetary order in the amount of \$600.00.

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: February 21, 2019

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Residential Tenancy Branch