



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding PINNACLE INTERNATIONAL REALTY  
INC. and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      FFT MNDCT MNSD

### Introduction

This hearing was convened by way of conference call concerning an application made by the tenant seeking a monetary order as against the landlord for return of all or part of the pet damage deposit or security deposit; a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; and to recover the filing fee from the landlord for the cost of the application.

The tenant attended the hearing and gave affirmed testimony, however the line remained open while the telephone system was monitored for 10 minutes prior to hearing any testimony, and no one for the landlord joined the call. The tenant testified that the landlord was served with the Tenant Application for Dispute Resolution and notice of this hearing (the Hearing Package) by Registered Mail on March 24, 2019 and has provided a receipt from Canada Post bearing that date as well as a copy of a Registered Domestic Customer Receipt addressed to the landlord. I am satisfied that the landlord has been served in accordance with the *Residential Tenancy Act*.

### Issue(s) to be Decided

- Has the tenant established a monetary claim as against the landlord for all or part or double the amount of the security deposit?
- Has the tenant established a monetary claim as against the landlord for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and more specifically for bank fees and compensation for the time spent to obtain a reversal of an overpayment of rent?

### Background and Evidence

The tenant testified that this tenancy began on March 1, 2016 and ended on February 28, 2019. Rent in the amount of \$790.00 per month was payable on the 1<sup>st</sup> day of each month, which was raised annually. The tenant paid rent of \$851.00 effective March 1, 2018, and was served with another rent increase to \$872.00 effective March 1, 2019, but the tenancy ended prior to that date, and there are no rental arrears. At the outset of the tenancy the landlord collected a security deposit from the tenant in the amount of \$395.00, which is still held in trust by the landlord, and no pet damage deposit was collected. The rental unit is an apartment in a complex. A written tenancy agreement was signed by the parties, but a copy has not been provided for this hearing.

The tenant further testified that he gave notice to end the tenancy on January 30, 2019 which also contained the tenant's forwarding address. A copy has been provided, and it is dated January 29, 2019 and contains an effective date of vacancy of February 28, 2019. The tenant gave one copy personally to each of 2 building managers of the landlord company on January 30, 2019 and sent another copy to each of the 2 building managers by text message to be sure there were no mistakes about the tenancy ending.

Rent was paid by automatic debit throughout the tenancy. The landlord had erroneously collected rent for March, 2019 in the increased amount of \$872.00. The tenant noticed that the money had been taken from his account on March 4, 2019 and called the bank. The person at the bank said the tenant could put a Stop Payment on it, but would have to attend personally at his branch. The tenant did so and filled out some forms, and the money went back into the tenant's bank account. The tenant testified that he had to pay a service charge of \$15.00, and the overpayment of rent put the tenant's bank account into an overdraft and the tenant had to pay another \$5.00 for what the bank calls an "Advance Posting" to prevent cheques from bouncing. The error by the landlord also caused another payment to require an Advance Posting and another \$5.00 fee. The tenant had to get a cash advance from his credit card in the amount of \$400.00 to put his bank account back into a credit balance. A copy of the tenant's bank statement has been provided as evidence for this hearing.

The tenant also testified that one of the building managers inspected the rental unit on February 28, 2019 and filled out a report on the landlord's letterhead and asked the tenant to sign it. The tenant did not receive a copy and did not receive a copy of the move-in condition inspection report.

The landlord has not returned any portion of the security deposit to the tenant, and the landlord has not served the tenant with an Application for Dispute Resolution claiming

against the deposit. The landlord has not made any claim for rent beyond February 28, 2019. The tenant has not heard from any agent of the landlord at all.

The tenant claims double the amount of the security deposit, or \$790.00, as well as recovery of the service charges totalling \$32.40, \$120.00 for compensation for the time spent to obtain a reversal of an overpayment of rent, and recovery of the \$100.00 filing fee for the cost of this application.

### Analysis

The *Residential Tenancy Act* is clear – a landlord has 15 days from the later of the date the tenancy ends or the date the landlord receives the tenant's forwarding address to return all of a pet damage deposit or security deposit to a tenant, or must make an Application for Dispute Resolution claiming against the deposit(s) within that 15 day period. If the landlord fails to do either, the landlord must repay the tenant double the amount.

In this case, I have reviewed the evidentiary material, and I accept the undisputed testimony of the tenant that the landlord collected a security deposit in the amount of \$395.00 at the beginning of the tenancy. I further accept that the tenant ended the tenancy in accordance with the *Act* by giving both building managers and agents of the landlord a notice to end the tenancy on January 30, 2019 which also contained the tenant's forwarding address. I find that the tenancy ended on February 28, 2019 and the landlord received the tenant's forwarding address on January 30, 2019.

I also accept the undisputed testimony of the tenant that the landlord has not returned any portion of the security deposit. The tenant also testified that he has not been served with an Application for Dispute Resolution by the landlord claiming against the security deposit, and I have no such application before me. I am satisfied that the tenant has established a monetary claim as against the landlord for double the amount of the security deposit, or \$790.00.

With respect to the tenant's claim for recovery of bank fees, the evidence clearly shows that the tenant paid \$15.00 for the Stop Payment and \$5.00 twice due to the landlord's error in taking rent from the tenant's account after the tenancy had ended. I have no evidence beyond \$25.00, and I find that the tenant has established that claim.

With respect to compensation for the wrongful overpayment of rent, the *Act* specifies that if damage or loss results from a party not complying with the *Act* or the tenancy agreement, I may determine the amount and order compensation, but such compensation must not be to punish the landlord for any wrong-doing. In this case, I

am satisfied that the tenant had to call the bank, attend personally at his branch, complete some forms, take money from his credit card to deposit into his account to cover the overdraft, and that the tenant had to do so as a result of the landlord's failure to comply with the *Act*. I find the amount to be reasonable and not meant to punish the landlord, and I order the landlord to pay compensation to the tenant in the amount of \$120.00.

In summary, I find that the tenant has established a monetary claim of \$790.00 for double the amount of the security deposit; \$25.00 for bank fees; and \$120.00 for compensation for damage or loss. Since the tenant has been successful with the application the tenant is also entitled to recovery of the \$100.00 filing fee.

### Conclusion

For the reasons set out above, I hereby grant a monetary order in favour of the tenant as against the landlord pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$1,035.00.

This order is final and binding and may be enforced.

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: April 29, 2019

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Residential Tenancy Branch