



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDCT MNSD

### Introduction

This hearing was convened by way of conference call concerning an application made by the tenant seeking a monetary order for return of the security deposit or pet damage 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 and the landlord attended the hearing and each gave affirmed testimony. The parties were given the opportunity to question each other and give submissions.

No issues with respect to service or delivery of documents or evidence were raised, and all evidence relevant to the tenant's application has been reviewed and is considered in this Decision.

### Issue(s) to be Decided

- Has the tenant established a monetary claim as against the landlord for return 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 double the amount of the security deposit?

### Background and Evidence

The parties agree to the following facts:

- there is no written tenancy agreement;

- at the outset of the tenancy the landlord collected a security deposit from the tenant in the amount of \$525.00 which is still held in trust by the landlord, and no pet damage deposit was collected;
- rent in the amount of \$1,100.00 per month was payable on the 1<sup>st</sup> day of each month;
- there are no rental arrears;
- the tenancy ended on August 1, 2018 after the tenant gave written notice to vacate;
- no move-in or move-out condition inspection reports were completed by the parties;
- the rental unit is a house, single family dwelling.

**The tenant** testified that this month-to-month tenancy began on April 1, 2016.

The tenant offered to give the landlord her forwarding address, but the landlord didn't take it. On April 3, 2019 the landlord asked the tenant for an address, and the tenant provided it through FaceBook Messenger that day. The landlord replied to the tenant with her new address.

The tenant further testified that the landlord was served with the Tenant's Application for Dispute Resolution by registered mail on March 23, 2019 which contained the tenant's address.

The landlord has not returned any portion of the security deposit to the tenant and has not served the tenant with an Application for Dispute Resolution, and the tenant claims double the amount, or \$1,050.00 and recovery of the \$100.00 filing fee.

**The landlord** testified that the tenancy actually began on August 1, 2016, and rent was paid by e-transfers. Rent was discounted for a few months near the beginning of the tenancy in exchange for the tenant building a fence, which was never done. The landlord did not reside in the same community as the rental unit, and the parties often communicated through email or other electronic means.

Once the landlord was notified of this hearing, the landlord contacted the tenant for her address so the landlord could serve evidence. The landlord had moved and had someone pick up her mail, and then the landlord would personally retrieve it. The person emailed the landlord about the tenant's hearing package, and on April 3, 2019 the tenant provided a forwarding address to the landlord by way of FaceBook Messenger.

The landlord did not know that in order to retain the security deposit the landlord would have to make an Application for Dispute Resolution; the damage deposit is for damages and the tenant left damages.

### Analysis

Firstly, a security deposit as defined in the *Residential Tenancy Act* is not a “damage deposit” for damages. It is security to off-set unpaid rent or utilities or damages left by a tenant. However, the *Residential Tenancy Act* is clear; a landlord must return a security deposit in full to a tenant or make an Application for Dispute Resolution claiming against the security deposit within 15 days of the later of the date the tenancy ends or the date the landlord receives the tenant’s forwarding address in writing. If the landlord fails to do either within that 15 day period, the landlord must repay the tenant double the amount of the security deposit and/or pet damage deposit.

In this case, the parties agree that the tenancy ended on August 1, 2018 and the tenant provided a forwarding address on April 3, 2019 by FaceBook Messenger, which is not a method sanctioned by the *Act*. The tenant also served the landlord with the Tenant’s Application for Dispute Resolution by registered mail on March 23, 2019 which contained the tenant’s forwarding address. However, providing a forwarding address on an application seeking double the amount of the security deposit is pre-mature.

However, the *Act* also places the onus on the landlord to ensure that move-in and move-out condition inspection reports are completed in accordance with the regulations. If the landlord fails to do so, the landlord’s right to make a claim against the security deposit for damages is extinguished. In this case, there are no such reports, and I find that the landlord’s right to claim against the security deposit for damages is extinguished. Therefore, any claim that the landlord may have for damages cannot be applied against the security deposit.

In the circumstances, I find that the tenant is entitled to recovery of the \$525.00 security deposit. **If the landlord fails to return that amount to the tenant within 15 days of today’s date, the tenant will be at liberty to re-apply for double the amount, and I dismiss the tenant’s application for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement with leave to reapply.**

Since the tenant has been partially 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 \$625.00.

The tenant's application for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement is hereby dismissed with leave to reapply.

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 26, 2019

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Residential Tenancy Branch