



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNSD, FFT

### Introduction

On January 10, 2019, 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 parties were asked if they had any questions. The parties provided affirmed testimony and were provided the opportunity to present their 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.

### Issues to be Decided

- Is the Tenant entitled to the return of double the security deposit?

### Background and Evidence

The parties testified that the tenancy began in October 2016, and ended on December 19, 2018, the date the move out inspection occurred and the unit keys were returned. The parties testified that the Tenant paid the Landlord a security deposit of \$897.50 and a key deposit of \$100.00.

The Tenant testified that the Landlord did not return the security deposit after the Tenant moved out of the rental unit.

The Tenant testified that there was no agreement that the Landlord could retain any amount of the security deposit at the end of the tenancy. The Tenant acknowledged that he signed the move out inspection report stating that he would agree to a deduction of \$95.00 for a door.

The Tenant testified that he provided the Landlord with his forwarding address in writing on December 19, 2018, at the time of the move out inspection. The move out condition report contains the Tenants forwarding address.

The Tenant testified that on January 11, 2019, he received a cheque from the Landlord in the amount of \$751.35. The Tenant submitted that the Landlord failed to return the proper amount of the deposit and withheld an amount that was not agreed upon. The Tenant submitted that the Landlord failed to repay the security deposit to him within 15 days of December 19, 2018; the end date of the tenancy.

The Tenant submitted that the Landlord breached the Act and the Tenant is seeking double the amount of the security deposit and the return of the \$100.00 key deposit.

The Tenant testified that he has never cashed the cheque he received from the Landlord in the amount of \$751.35.

In reply, Landlord argued that the tenancy should properly end on December 31, 2018, the latest date that the Tenant was entitled to occupy the unit.

The Landlord testified that the Tenant is responsible to damage to a door in the unit, and the Landlord deducted the costs of replacing the door from the security deposit. The Landlord confirmed that he did not have a written agreement from the Tenant permitting the Landlord to make the deductions.

The Landlord argued that the move out inspection report contains information that a door was damaged and it was estimated to cost \$380.00. The Landlord argued that this information in the report should be considered towards his decision to deduct the cost of repairs from the security deposit.

### Analysis

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

I find that the tenancy ended on December 19, 2018, when the unit keys were returned to the Landlord and the move out inspection was completed which included the Tenants forwarding address. The Tenant had no access to the rental unit beyond December 19, 2018.

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 provides:

*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.*

I find that the Tenant provided his forwarding address to the Landlord on December 19, 2018. The Landlord did not apply for dispute resolution making a claim against the security deposit within 15 days of the tenancy end and after receiving the Tenant's forwarding address. I find that there was no agreement from the Tenant that the Landlord could keep the amount of \$246.15 from the security deposit.

I do not accept the Landlords submission that the estimate information contained within the condition inspection report gives him authority to withhold an amount for damage to a door. It is clear that the Tenant did not agree to this deduction as the Tenant only authorized the deduction amount of \$95.00.

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.

Policy Guideline # 17 Security Deposit and Set Off also provides examples of how a security deposit may be doubled. The Guideline provides the following example:

*Example C: A tenant paid \$400 as a security deposit. The tenant agreed in writing to allow the landlord to retain \$100. The landlord returned \$250 within 15 days of receiving the tenant's forwarding address in writing. The landlord retained \$50 without written authorization.*

*The arbitrator doubles the amount that remained after the reduction authorized by the tenant, less the amount actually returned to the tenant. In this example, the amount of the monetary order is \$350 ( $\$400 - \$100 = \$300 \times 2 = \$600$  less amount actually returned \$250).*

I find that the Tenant agreed in writing to allow the Landlord to retain \$95.00 of the security deposit. I find that a deposit of \$802.50 remained after the authorized deduction of \$95.00. Double the amount of \$802.00 amounts to \$1,604.00. I find that the Landlord owes the Tenant the amount of \$1,604.00. Since the Tenant has not cashed the cheque in the amount of \$751.35 issued by the Landlord back in January 2019, I order the Tenant to destroy the cheque.

I also find that the Landlord must return the \$100.00 key deposit to the Tenant.

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

I order the Landlord to pay the Tenant the amount of \$1,804.00. I grant the Tenant a monetary order in the amount of \$1,804.00. 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 a key deposit and failed to return the security deposit to the Tenant in accordance with the section 38 of the Act.

The Tenant is awarded double the amount of the security deposit. I grant the Tenant a monetary order in the amount of \$1,804.00.

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: May 08, 2019

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Residential Tenancy Branch