



# Dispute Resolution Services

Page: 1

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

The Landlord and Tenant were each given full opportunity under oath to be heard, to present evidence and to make submissions. It was noted shortly after the hearing began that the Landlord’s use and understanding of English appeared to be limited. When asked if the Landlord required the help of a translator, the Landlord stated that it could understand and communicate with its English and wanted the hearing to continue despite the language limitations.

### Issue(s) to be Decided

Are the Tenants entitled to return of double the security deposit?

Are the Tenants entitled to recovery of the filing fee?

### Relevant Background and Evidence

The following are agreed facts: The tenancy under written agreement started on March 29, 2018 for a fixed term to end March 31, 2019. The tenancy ended on March 31, 2019. At the outset of the tenancy the Landlord collected \$1,050.00 as a security deposit and \$1,050.00 as a pet deposit. On April 15, 2019 the Tenants sent their

forwarding address to the Landlord on by registered mail. On April 18, 2019 the Tenant received the pet deposit of \$1,050.00 back from the Landlord. The Landlord did not return the security deposit of \$1,050.00. The Landlord made no application for dispute resolution to claim against the security deposit.

The Landlord states that the Tenant signed its agreement to the damages listed on the move-out report and then later changed its mind and only agreed over the phone to the cleaning costs. The Tenant agrees that it signed its agreement to the inspection report and states that it did not sign any authorization for the Landlord to retain any amount of the security deposit. The Landlord states that it provided a copy of the move out report. It is noted that the move out report is not in English. The Tenant states that it does not waive any entitlement to return of double the security deposit.

#### Analysis

Section 38(4) 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. As the move-out report was not completed in English and as the Tenant states that it only agreed to the damages but not to the retention of any amount of the security deposit, I find on a balance of probabilities that the Tenant did not agree in writing for the Landlord to retain the security deposit.

Section 38 of the Act also 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. An agreement over the phone is not an agreement in writing. As the Landlord did not have any written authorization to retain any portion of the security deposit, as the Landlord did not return the full amount of the security deposit and as the Landlord did

not make an application to claim retention of any part of the security deposit I find that the Landlord must now pay the Tenant double the security deposit plus zero interest of **\$2,100.00**. As the Tenants have been successful with its claim I find that the Tenants are also entitled to recovery of the **\$100.00** filing fee for a total entitlement of **\$2,200.00**.

Conclusion

I grant the Tenant an order under Section 67 of the Act for **\$2,200.00**. 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 Act.

Dated: August 20, 2019

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Residential Tenancy Branch