



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding TML MANAGEMENT LTD.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Code            MNSD, FF

### Introduction

The tenant applies to recover all but \$50.00 of the deposit money she paid the landlord at the start of the tenancy.

Both parties attended the hearing, the landlord represented by Mr. L., and were given the opportunity to be heard, to present sworn testimony and other evidence, to make submissions, to call witnesses and to question the other. Only documentary evidence that had been traded between the parties was admitted as evidence during the hearing.

### Issue(s) to be Decided

Does the landlord have a lawful basis to retain any of the deposit money?

### Background and Evidence

The rental unit is a one bedroom condominium apartment. The landlord is the property manager working on behalf of the undisclosed owner of the apartment. The tenancy started in August 2018 under a written tenancy agreement for a one year fixed term at a monthly rent of \$1380.00. The tenant paid a security deposit of \$690.00 plus a “club card” deposit of \$100.00. She paid a move in fee of \$50.00.

In January 2019 the tenant emailed the landlord that she would like its agreement to end the tenancy earlier than the one year fixed term; at the end of February. The landlord responded that if the tenant ended the tenancy she would be responsible for

rent for the remainder of the term or until a new tenant could be found and for a “rent up” as the cost of locating a new tenant and for the cost of a credit check on the new tenant.

The tenant vacated the rental unit on February 27. The parties conducted a move out inspection and a report was prepared and signed. In it the tenant authorized the landlord to retain \$50.00 from the deposit money to pay for a strata fine imposed for her failure to attend a fire inspection.

The tenant provided her forwarding address in the move out report.

The landlord found a new tenant for March 1 at a rent not stated at hearing. On March 12 it refunded the tenant the amount of \$15.50, being the remainder from the \$690.00 security deposit and \$100.00 club fee after deduction of the \$50.00 fire inspection fine (authorized by the tenant in the move out report) and \$724.50 for the rent up fee (misdescribed by the landlord as being for “repairs and maintenance”).

### Analysis

Section 38(4) of the *Residential Tenancy Act* (the “Act”) permits a landlord to retain an amount from a security deposit that either (a) 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, or (b) after the end of the tenancy, the director orders that the landlord may retain the amount.

The landlord had the tenant’s written authorization to retain only \$50.00 for the fire inspection fine.

Section 38(1) of the *Act* provides that once a tenancy has ended and once the tenant has provided a forwarding address in writing, the landlord has 15 days to either repay the deposit money or make an application for dispute resolution to keep all or a part of it.

This subsection is designed to prevent a landlord from unilaterally holding deposit money that a tenant might well need to deposit on subsequent accommodation.

Section 38(6) of the *Act* states that if a landlord violates subsection (1) it may not make a claim against deposit money and must pay the tenant double the amount of the deposit due at the end of the tenancy.

This decision is not about whether the tenant owes the landlord any money. The landlord is free to pursue its monetary claim against the tenant subject only to the time limitations imposed by the *Act*. It must do so by bringing its own application for dispute resolution. This decision is to resolve the question of whether or not the landlord is entitled to keep back or retain any deposit amount other than the \$50.00 authorized by the tenant in the move out report.

I determine that the landlord did not have the tenant's written authorization to retain anything more than \$50.00 of the deposit money. The tenant is owed the remainder of the \$690.00 security deposit and the \$100.00 club card deposit. I consider that the move in fee to have been a charge levied by the strata corporation and not the landlord's responsibility. The tenant isn't entitled to recover the move in fee from the landlord.

Section 38 provides for doubling of a security deposit in these circumstances but the tenant has not requested a doubling in her application. Residential Tenancy Policy Guideline 17: "Security Deposit and Set off [*sic*]" dictates that an arbitrator is to award the doubling even when the tenant has not requested it unless the tenant declines it, either in the application or at hearing.

The question was put to the tenant at this hearing and she did not decline the doubling.

I find that the tenant is entitled to her security deposit of \$690.00, less the \$50.00 authorized to be deducted, doubled to \$1280.00 and less the \$15.50 she has already received back for a total of \$1264.50.

She is entitled to recover the \$100.00 refundable club card fee. This amount is not doubled as it is a "refundable fee" within the terms of s. 6 of the Residential Tenancy Regulation.

Conclusion

The tenant is entitled to a monetary award of \$1364.50 plus recovery of the \$100.00 filing fee. She will have a monetary order against the landlord in the amount of \$1464.50.

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: June 11, 2019

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Residential Tenancy Branch