



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNDCT, MNSD

### Introduction

this hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "*Act*") for:

- a monetary order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67; and
- an order for the return of all or a portion of the tenant's security pursuant to section 38.

Both parties attended the hearing and had full opportunity to provide affirmed testimony, present evidence, cross examine the other party, and make submissions. The landlord acknowledged receipt of the tenant's Notice of Hearing and Application for Dispute Resolution. Neither party raised issues of service. I find the parties were served in accordance with the *Act*.

### Issue(s) to be Decided

Is the tenant entitled to a monetary order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67?

Is the tenant entitled to the return of all or a portion of the tenant's security pursuant to section 38?

### Background and Evidence

The tenant testified that the parties signed a tenancy agreement on July 16, 2018 with a monthly rent of \$875.00 and the tenant paid a security deposit of \$437.50.

On July 30, 2018, the landlord discovered that the tenant had a service cat. The tenant testified that the cat federally certified as a service animal. The tenant sent the landlord a text message advising the landlord that the pet was a certified service animal.

The landlord told the tenant that the tenant was offered a reduced rent because the tenant had no pets. The parties agreed to increase the rent to \$1,000.00 per month since the tenant had a pet. This amendment to the tenancy agreement was confirmed in text messages. The tenant also paid the landlord an additional \$62.50 to increase the security deposit to \$500.00.

The tenant paid rent of \$1,000.00 for the months of August 2018 to February 2019, inclusive. The tenant paid rent of \$600.00 for March 2019 and \$875.00 for April 2019.

The parties signed a Mutual Agreement to End a Tenancy effective on May 31, 2019. The tenant moved out of the rental unit on May 3, 2019. The landlord has not returned the security deposit

The tenant did not send the landlord his forwarding address. However, the tenant's forwarding address was on the tenant's Application for Dispute Resolution which the landlord has acknowledged that he received.

### Analysis

The tenant is seeking a reimbursement for rent paid in excess of the \$875.00 monthly rent stated in the tenancy agreement. The tenant is also seeking return of the security deposit. I will address each of these claims separately.

i. *Claim for Reimbursement of Rent Paid in Excess of \$875.00*

*Residential Tenancy Policy Guidelines* Number 28 states:

The Guide Dog and Service Dog Act of B.C. prohibits a landlord from discriminating against a person with a disability who intends to keep a guide or service dog in the residential premises.

In addition, section 18(3) of the *Act* states that the *Residential Tenancy Act* is subject to the *Guide Dog and Service Dog Act*.

Section 3(2) of the *Guide Dog and Service Dog Act* states that one cannot:

- (a) deny to a guide dog team, service dog team or retired guide or service dog team a manufactured home site or rental unit advertised or otherwise represented as available for occupancy by a tenant, or
- (b) impose, on an individual who is a member of any of those teams, a term or condition for the tenancy of a manufactured home site or rental unit if the term or condition discriminates

on the basis that the individual who is a member of the team intends to keep the dog that is a member of the team in the manufactured home site or rental unit.

I find that the landlord has discriminated against the tenant in violation of Section 3(2) of the *Guide Dog and Service Dog Act*. I find that the landlord has imposed a higher rent on the tenant based upon his use of a service animal. Section 3(2) of the *Guide Dog and Service Dog Act* prohibits the imposition of terms and conditions on tenancies on the basis of having a service animal. As such, I find that the increased rent violates Section 3(2) of the *Guide Dog and Service Dog Act* which thereby violates s. 18(3) of the *Residential Tenancy Act*.

S. 67 of the *Act* states that a party may be ordered to pay compensation to the other party for not complying with the *Act*. I find that the tenant should be compensated for the rent paid in excess of \$875.00 per month as the increased rent was in violation of s. 18(3) of the *Residential Tenancy Act*. The tenant paid an additional \$125.00 per month (\$1,000.00 paid less the original rent of \$875.00) for the months of August 2018 to February 2019, inclusive. Accordingly, I find that the tenant is entitled to a

reimbursement of \$825.00 for reimbursement of the landlord's extra fees for having a service animal.

ii. Return of Deposit

The *Act* contains comprehensive provisions for addressing security and/or pet damage deposits at the end of the tenancy. Both the landlord and the tenant have responsibilities under section 38 of the *Act*.

Section 38(1) of the *Act* requires the landlord to either return the tenant's security deposit in full or file for dispute resolution for authorization to retain the deposit 15 days after the later of:

- a. the date the tenancy ends, **and**
- b. the date the landlord receives the tenant's forwarding address in writing

In this case, the tenant admitted that he did not send his forwarding address to the landlord before filing this application. However, the tenant's Application for Dispute Resolution, which forms part of the Notice of Dispute Resolution Proceeding for this hearing, contains a written "Address for Service of Documents" for the tenant. The landlord acknowledged receipt of the tenant's Application for Dispute Resolution.

Accordingly, I deem that the landlord is now in receipt of a written forwarding address for the tenant as provided in the tenant's Application for Dispute Resolution for this hearing. This finding triggers the landlord to take one of the following actions under section 38(1) of the *Act* as follows:

- (c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;
- (d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

As such, I find the tenant's Application to recover the security deposit is premature and the landlord may still address the tenant's security deposit in accordance with the above-noted provisions of section 38 of the *Act*. Given this finding, I do not find that the tenant is entitled to the recover the filing fee from the landlord for this application.

To clarify, this means that the landlord has 15 days from the deemed receipt date of this decision to address the tenant's security deposit in accordance with section 38 of the *Act*. The deemed receipt date of this decision is five days from the date of this decision. The date of this decision is noted in the Conclusion section of this decision. Should the landlord fail to address the security deposit within that timeline, the tenant will be at liberty to reapply for dispute resolution to claim double the amount of the security deposit pursuant to section 38(6) of the *Act*.

### Conclusion

Accordingly, I grant the tenant a monetary order of \$825.00 for reimbursement of the landlord's extra fees for having a service animal.

I dismiss the tenant's application with leave to reapply to request the return of the security deposit, should the landlord fail to address the security deposit in accordance with 38 of the *Act*, within 15 days of the deemed receipt date of this decision

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: August 13, 2019

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Residential Tenancy Branch