



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding WESTSTONE GROUP and [tenant  
name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNSD, MNDCT, FFT

### Introduction

This hearing was convened as a result of the tenant's Application for Dispute Resolution ("application") seeking remedy under the *Residential Tenancy Act* ("Act"). The tenant applied for the return of double their security deposit and pet damage deposit, for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and to recover the cost of the filing fee.

The tenant, an agent for the tenant DL ("tenant agent"), and two agents for the landlord BH and KG ("landlord agents") appeared at the teleconference hearing. The parties gave affirmed testimony and the hearing process was explained to the parties. During the hearing the parties presented their evidence. A summary of the evidence is provided below and includes only that which is relevant to the hearing.

Both parties confirmed having received and reviewed the documentary evidence from the other party prior to the hearing. No service issues were raised during the hearing. I am satisfied that both parties were sufficiently served in accordance with the *Act*.

### Preliminary and Procedural Matter

The parties confirmed their email addresses at the outset of the hearing. The parties confirmed their understanding that the decision will be emailed to the parties. Any applicable order(s) will be emailed to the appropriate party for service on the other party.

### Issues to be Decided

- Is the tenant entitled to the return of double their security deposit and pet damage deposit under the *Act*?

- Is the tenant entitled to monetary compensation for damage or loss under the *Act*, regulation or tenancy agreement, and if so, in what amount?
- Is the tenant entitled to the return of the filing fee under the *Act*?

### Background and Evidence

A copy of the tenancy agreement was submitted in evidence. A fixed-term tenancy ended on December 7, 2018 and was scheduled to revert to a month to month tenancy after December 30, 2019. The monthly rent during the tenancy was \$1,500.00 per month and was due on the first day of each month. The tenant paid a security deposit of \$750.00 and a pet damage deposit of \$750.00 at the start of the tenancy, which the landlord continues to hold. The tenant vacated the rental unit early on April 14, 2019.

The tenant testified that she provided her written forwarding address to the landlord on May 7, 2019, which the agents confirmed having received. The agents confirmed that they have not returned the tenant's security deposit or pet damage deposit, have not submitted an application claiming towards either deposit, and did not have written permission from the tenant to retain either deposit.

### Settlement Agreement

During the hearing, the parties agreed on a partial mutual agreement on a \$48.00 NSF fee incurred by the tenant due to the landlord attempting to withdraw May 2019 rent from the tenant's bank account after the tenancy had already vacated the rental unit.

The parties agreed that this mutually settled agreement was made on a voluntary basis and that the parties understood the nature of the full, final and binding settlement of the \$48.00 fee to be paid by the landlord to the tenant for the NSF fee incurred by the tenant as described above. The settlement agreement for this portion of the application is made in accordance with section 63 of the *Act*.

### Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on the balance of probabilities, I find the following.

Test for damages or loss

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in sections 7 and 67 of the *Act*. Accordingly, an applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did what was reasonable to minimize the damage or loss.

In this instance, the burden of proof is on the tenant to prove the existence of the damage/loss and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the landlord. Once that has been established, the tenant must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the tenant did what was reasonable to minimize the damage or losses that were incurred.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

In the matter before me, there is no dispute that the landlord has not returned the \$750.00 security deposit and the \$750.00 pet damage deposit to the tenant. There is insufficient evidence before me that the tenant agreed in writing to surrender any amount of the security deposit or pet damage deposit to the landlord. There is no dispute that the landlord has not submitted an application to claim against either deposit since the tenant vacated the rental unit.

Section 38 of the *Act* applies and states in part:

**Return of security deposit and pet damage deposit**

**38** (1) Except as provided in subsection (3) or (4) (a), within 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,

the landlord must do one of the following:

(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.

(6) If a landlord does not comply with subsection (1), the landlord

(a) may not make a claim against the security deposit or any pet damage deposit, and

**(b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.**

[Emphasis added]

In the matter before me, I find that the landlord breached section 38 of the *Act* by failing to return the security deposit and pet damage deposit in full to the tenant within 15 days of receiving the forwarding address of the tenant in writing as of May 7, 2019.

Therefore, as the landlord also failed to make a claim against the tenant's security deposit within 15 days of May 7, 2019, and has no written authorization from the tenant to retain any amount from the combined deposits, I find the tenant is entitled to the return of double the original security deposit of \$750.00 and double the pet damage deposit of \$750.00 for a total of **\$3,000.00**. I note that the tenant's combined deposits have accrued \$0.00 in interest since the start of the tenancy.

As the tenant's application was successful, I grant the tenant the recovery of the filing fee in the amount of **\$100.00** pursuant to section 72 of the *Act*.

**Monetary Order** – I find that the tenant has established a total monetary claim in the amount of **\$3,148.00**, comprised of \$3,000.00 for the doubled security deposit and pet damage deposit, plus the \$100.00 filing fee, and the \$48.00 NSF fee by way of a mutual agreement. I grant the tenant a monetary order pursuant to section 67 of the *Act* in the amount of **\$3,148.00**.

### Conclusion

Firstly, the parties reached a mutually settled agreement for the \$48.00 NSF fee as described above. I order the parties to comply with their agreement pursuant to section 63 of the *Act*.

The remainder of the tenant's application is fully successful. The tenant has established a total monetary claim of \$3,148.00 comprised of the return of double their security deposit and pet damage deposit in the amount of \$3,000.00, plus the \$100.00 filing fee, and the \$48.00 NSF fee by way of a mutual agreement. The tenant has been granted a monetary order under section 67 of the *Act* in the amount of \$3,148.00. This order must be served on the landlord and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

I caution the landlord not to breach section 38 of the *Act* in the future.

This decision will be emailed to both parties. The monetary order will be emailed to the tenant for service on the landlord.

This decision is final and binding on the parties, unless otherwise provided under the *Act*, and 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: September 10, 2019

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Residential Tenancy Branch