



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding NAROD PROPERTIES CORP. and  
[tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      FFT, MNSD

### Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Tenants on June 14, 2019 (the "Application"). The Tenants applied for return of the security and pet damage deposit as well as reimbursement for the filing fee.

The Tenant appeared at the hearing. The Agent appeared at the hearing for the Landlord.

The Agent provided the correct rental unit address which is reflected on the front page of this decision. The parties agreed the Agent should not be personally named on the Application. I have removed the Agent from the style of cause.

The Tenant advised she is seeking double the security and pet damage deposit back if I find the Landlord failed to comply with the *Residential Tenancy Act* (the "Act").

I explained the hearing process to the parties and answered their questions in this regard. The parties provided affirmed testimony.

Both parties submitted evidence prior to the hearing. I addressed service of the hearing package and evidence.

The Agent confirmed receipt of the hearing package and evidence. The Agent advised that some of the photos he received are blank or not clear. The photos are of the condition of the rental unit. I explained to the parties that the photos are likely irrelevant to the Application but that we would come back to this issue if the photos became relevant. The photos are not relevant to the decision and therefore I did not address this issue further at the hearing.

The Tenant confirmed receipt of the Landlord's evidence.

The parties were given an opportunity to present relevant evidence, make relevant submissions and ask relevant questions. I have considered the relevant documentary evidence and all oral testimony of the parties. I have only referred to the evidence I find relevant in this decision.

### Issues to be Decided

1. Are the Tenants entitled to return of double the security and pet damage deposit?
2. Are the Tenants entitled to reimbursement for the filing fee?

### Background and Evidence

A written tenancy agreement was submitted as evidence and the parties agreed it is accurate. The tenancy started February 12, 2017 and was for a fixed term ending February 28, 2018. The tenancy then became a month-to-month tenancy. The parties agreed rent was \$1,435.00 at the end of the tenancy. Rent was due on or before the first day of each month. The Tenants paid a \$675.00 security deposit and \$675.00 pet damage deposit.

The parties agreed the tenancy ended April 30, 2019.

The parties agreed the Tenants' forwarding address was provided on the Condition Inspection Report on May 06, 2019.

The parties agreed on the following. The Landlord did not have an outstanding monetary order against the Tenants at the end of the tenancy. The Landlord did not apply to the RTB to keep the security or pet damage deposit.

The Agent submitted that the Tenants' agent agreed to deductions from the security and pet damage deposit on the Condition Inspection Report upon move-out. The Landlord submitted a copy of the Condition Inspection Report. There is no amount noted in the relevant section. The Agent testified that they could not put an amount in the relevant section of the Condition Inspection Report because they did not know what the cost of the repairs would be at that point. The Condition Inspection Report is the only document the Agent relied on as an agreement in writing about the deductions.

The Tenant testified that the Tenants agreed they would owe something of the deposits at the end of the tenancy, but the issue is the amount the Landlord withheld. The Tenant testified that the Tenants do not agree with the amount as the amount withheld for repairs is unreasonable. The Tenant submitted that the Tenants never agreed to the amount withheld being deducted from the security or pet damage deposit.

The parties agreed the Landlord returned \$720.00 of the security and pet damage deposits to the Tenants. The Tenants submitted an email showing they received this May 17, 2019. The Agent did not know when the cheque was sent out but did not dispute that the Tenants received it May 17, 2019.

The parties agreed that both parties did a move-in and move-out inspection.

### Analysis

Section 38 of the *Act* sets out the obligations of a landlord in relation to security and pet damage deposits held at the end of a tenancy.

Section 38(1) requires a landlord to return the security and pet damage deposit in full or claim against them within 15 days of the later of the end of the tenancy or the date the landlord receives the tenant's forwarding address in writing. There are exceptions to this outlined in sections 38(2) to 38(4) of the *Act*.

Given the testimony of the parties, I accept the tenancy ended April 30, 2019.

Given the testimony of the parties, I accept the Tenants provided the Landlord with their forwarding address on May 06, 2019.

May 06, 2019 is the relevant date for the purposes of section 38(1) of the *Act*. The Landlord had 15 days from May 06, 2019 to repay the deposits in full or file a claim against the deposits.

Given the testimony of the parties, I accept the following. The Landlord did not repay the security and pet damage deposits in full by May 21, 2019. The Landlord returned \$720.00 of the deposits by May 17, 2019. I do find that the Landlord returned one of the deposits in full within the 15-day time limit. The Landlord did not file a claim with the RTB claiming against the security or pet damage deposits by May 21, 2019.

Sections 38(2) to 38(4) of the *Act* state:

(2) Subsection (1) does not apply if the tenant's right to the return of a security deposit or a pet damage deposit has been extinguished under section 24 (1) [tenant fails to participate in start of tenancy inspection] or 36 (1) [tenant fails to participate in end of tenancy inspection].

(3) A landlord may retain from a security deposit or a pet damage deposit an amount that

(a) the director has previously ordered the tenant to pay to the landlord, and

(b) at the end of the tenancy remains unpaid.

(4) A landlord may retain an amount from a security deposit or a pet damage deposit if,

(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...

[emphasis added]

Given the testimony of the parties, I find the Tenants, or an agent for the Tenants, participated in the move-in and move-out inspections. Therefore, the Tenants did not extinguish their rights in relation to the security or pet damage deposits. Section 38(2) of the *Act* does not apply.

Given the testimony of the parties, I find the Landlord did not have an outstanding monetary order against the Tenants at the end of the tenancy. Section 38(3) of the *Act* does not apply.

The Agent submitted that the Tenants' agent agreed to deductions from the security and pet damage deposits on the Condition Inspection Report on move-out. However, the relevant section does not indicate an amount that the Tenants' agent agreed to. It only includes a list of issues the Tenants' agent agreed to.

Pursuant to section 38(4) of the *Act*, the Tenants had to agree to a specific amount being deducted from the security or pet damage deposits for this section to apply.

The Agent said the Landlord used the RTB Condition Inspection Report form. Page four of the form was not submitted; however, it states the following in relation to the relevant section under “Instructions for Completing Rental Unit Condition Report”:

At the End of the Tenancy...

20. Box Z: Use this box to list all damage to the rental unit or residential property for which the tenant is responsible.

21. Box 1...

22. Box 2: If, at the end of the tenancy, the tenant agrees that the landlord may retain all or a part of the security deposit or the pet damage deposit to pay a liability or obligation owed by the tenant to the landlord, the tenant should set out details of the amounts to be deducted, and what each amount is for...

[emphasis added]

The Tenants’ agent did not agree to a specific amount being deducted from the security or pet damage deposits. Therefore, section 38(4) of the *Act* does not apply.

I acknowledge that the Landlord did not know how much the repairs were going to cost when the Condition Inspection Report was completed upon move-out. However, if the parties could not agree on a specific amount at that time, the Landlord was required to either repay the security and pet damage deposits or file a claim against them with the RTB.

Given the above, I find the Landlord failed to comply with section 38(1) of the *Act* in relation to one of the deposits and that none of the exceptions outlined in sections 38(2) to 38(4) of the *Act* apply. Therefore, the Landlord is not permitted to claim against one of the deposits and must return double the deposit to the Tenants pursuant to section 38(6) of the *Act*.

Policy Guideline 17 deals with security deposits and states at page three:

5. The following examples illustrate the different ways in which a security deposit may be doubled when an amount has previously been deducted from the deposit:

Example A: A tenant paid \$400 as a security deposit. At the end of the tenancy, the landlord held back \$125 without the tenant’s written permission and without

an order from the Residential Tenancy Branch. The tenant applied for a monetary order and a hearing was held.

The arbitrator doubles the amount paid as a security deposit ( $\$400 \times 2 = \$800$ ), then deducts the amount already returned to the tenant, to determine the amount of the monetary order. In this example, the amount of the monetary order is  $\$525.00$  ( $\$800 - \$275 = \$525$ ).

This applies equally to pet damage deposits.

The above example applies here. I consider one of the deposits to have been repaid in full. The remaining deposit of  $\$675.00$  is doubled which equals  $\$1,350.00$ . The Landlord has returned  $\$45.00$  of the second deposit to the Tenants. Therefore, the Landlord must return a further  $\$1,305.00$  to the Tenants. There is no interest owed on the security or pet damage deposits as the amount of interest owed has been 0% since 2009.

As the Tenants were successful in this application, I award them reimbursement for the  $\$100.00$  filing fee pursuant to section 72(1) of the *Act*.

In total, the Tenants are entitled to  $\$1,405.00$ . I issue the Tenants a monetary order for this amount.

### Conclusion

The Tenants are entitled to  $\$1,405.00$  and I issue the Tenants a Monetary Order in this amount. This Order must be served on the Landlord as soon as possible. If the Landlord fails to comply with the Order, the Order may be filed in the Small Claims division of the Provincial 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: September 19, 2019

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Residential Tenancy Branch