



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNSD

### Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act") for a monetary order for the return of the security and pet damage deposits.

The Tenant and the Landlords, T.C. and H.D., appeared at the teleconference hearing and gave affirmed testimony. I explained the hearing process to the Parties and gave them an opportunity to ask questions about the hearing process. During the hearing the Tenant and the Landlords were given the opportunity to provide their evidence orally and to respond to the testimony of the other Party. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure ("Rules"); however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Neither Party raised any concerns regarding the service of the Application or the documentary evidence. Both Parties said they had received the Application and/or the documentary evidence from the other Party and had reviewed it prior to the hearing.

### Preliminary and Procedural Matters

The Parties provided their email addresses at the outset of the hearing and confirmed their understanding that the Decision would be emailed to both Parties and any Orders sent to the appropriate Party.

### Issue(s) to be Decided

- Is the Tenant entitled to a monetary order, and if so, in what amount?

### Background and Evidence

The Parties agreed that the fixed term tenancy began on March 1, 2019 and was to run to February 29, 2020, with a monthly rent of \$2,400.00, due on the first day of each month. The Parties agreed that the Tenant paid a security deposit of \$1,200.00 and a pet damage deposit of \$1,200.00. The Parties agreed that the Landlords retained \$1,400.00 of the deposits at the end of the tenancy, after the Tenant ended the tenancy early.

The Parties agreed that the tenancy ended on June 29, 2019, and that the Tenant gave the Landlords her written forwarding address via email on July 1, 2019. The Parties agreed that they did a move-in condition inspection, but no move-out inspection.

The Tenant said she agreed to let the Landlords keep \$200.00 of the pet damage deposit for cleaning costs, and that the Landlords returned the remaining \$1,000.00 of the pet damage deposit, but did not return any of the security deposit.

The Landlords pointed to clause 11 in the Addendum to the tenancy agreement that she said acts as a liquidation clause. The Landlords also said:

In the conversation on that day when she said she wanted to end early, I said I will take half a month to cover my costs. She said that is fair. I never said I will take the security deposit. We agreed instead of paying back and forth, the easiest way is to keep the security deposit. If I don't keep it, in the future there is nothing I can deduct from, but that is what we agreed. I agreed to a half month rent.

The Tenant submitted a copy of the Mutual Agreement to End a Tenancy dated March 12, 2019 ("Mutual Agreement"), with an effective vacancy date of June 30, 2019 at 1:00 p.m. There is a hand-written, initialed note on the bottom of the form stating: "As agreed, the tenant will forfeit the damage deposit of \$1,200.00 as penalty."

Clause 11 of the Addendum to the tenancy agreement that states:

11. Where the Landlord takes possession of the Rented Premises prior to the end of the term or any renewal thereof because the tenancy has been terminated and the Tenant has been evicted for breach of this Addendum and/or Tenancy Agreement, or where the Tenant has vacated without giving a valid Notice of

Termination, the Tenant shall remain liable to pay rent until the end of the term or any renewals thereof, subject to the Landlord's obligation to mitigate its losses, on the grounds that such rent payment obligation shall constitute reasonable damages to compensate the Landlord for early termination and breach of this Agreement; further, the Tenant shall be responsible for all reasonable costs, including marketing, re-decoration and repair costs, incurred by the Landlord to re-rent the Rented Premises in mitigation of its losses. This is not a penalty.

Contrary to clause 11 of the Addendum, the handwritten note in the Mutual Agreement states that the agreement for the Tenant to forfeit the security deposit of \$1,200.00 is, in fact, a "penalty". The Tenant said that she applied for dispute resolution to get her security deposit back, because the Landlords were not allowed to request a penalty.

The Tenant said that she advised the Landlords of her wish to end the tenancy by giving them two months to find a new tenant. The Tenant said:

I allowed her showings as long as I had notice. All was amicable and fine, but when I left, I missed our first appointment moving. I apologized for that and I asked to come another time. I cleaned the place and I didn't do the wet vac as a professional job, I did it myself. She was not satisfied with that. She pointed out in the tenancy agreement for professionals to do the wet vac. I agreed to \$200.00, take it from the security deposit, not in addition to the security deposit. I shouldn't have been asked for a penalty cost. Being uninformed I signed the paper. But the \$200.00 should not have been taken from my pet deposit. She was good enough to find someone to do that, but I dispute keeping the \$1200.00 for a penalty on top of that.

### Analysis

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

I find that the Tenant provided her forwarding address to the Landlords on July 1, 2019, and that the tenancy ended on June 29, 2019. Section 38(1) of the Act states the following about the connection of these dates to a landlord's requirements surrounding the return of the security 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.

The Landlords were required to return the \$1,200.00 security deposit and \$1,200.00 pet damage deposit within fifteen days of July 1, 2019, namely by July 16, 2019, or to apply for dispute resolution to claim against the security deposit, pursuant to Section 38(1). The Parties agreed that the Landlords returned \$1,000.00 of the Tenant's pet damage deposit, but retained \$200.00 of this deposit and the entire \$1,200.00 of the security deposit. The Landlords provided no evidence that they applied to the RTB for dispute resolution, claiming against the security deposit. Therefore, I find the Landlords failed to comply with their obligations under Section 38(1).

Section 38(6)(b) states that if a landlord does not comply with section 38(1) that the landlord must pay the tenant double the amount of the security deposit. There is no interest payable on the security deposit.

I find that the Tenant agreed to forego \$200.00 in cleaning costs to the Landlords. I find the Landlords' retention of the security deposit is inconsistent with the Act and the Landlords' duty to mitigate their losses. I, therefore, find that the Tenant is successful in her Application and I award the Tenant \$2,400.00 from the Landlords in recovery of double the \$1,200.00 security deposit pursuant to section 38(6) of the Act.

### Conclusion

The Tenant's claim against the Landlords for the return of the security deposit is successful in the amount of \$2,400.00. The Landlords did not return the Tenant's security deposit, and did not apply for dispute resolution in compliance with section 38(1) of the Act. I award the Tenant with double the amount of the \$1,200.00 security

deposit pursuant to section 38(6) of the Act. Further, the Landlords are cautioned not to attempt to contract out of their requirements under the Act.

I grant the Tenant a Monetary Order under section 67 of the Act from the Landlords in the amount of \$2,400.00.

This Order must be served on the Landlords by the Tenant and may be filed in the Provincial Court (Small Claims) and enforced as an Order of that Court.

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: December 2, 2019

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Residential Tenancy Branch