



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes MNSD, FF

### Introduction

This is an application by the tenant filed under the Residential Tenancy Act (the “Act”) for a monetary order for return of double the security deposit and the pet damage deposit (the “Deposits”) and the filing fee for the claim.

Both parties appeared, gave affirmed testimony, and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

### Preliminary and Procedure matters

At the outset of the hearing the parties agreed that LW listed as an applicant, is not a tenant under the tenancy agreement. Therefore, I have removed LW from the style of cause.

### Issues to be Decided

Is the tenant entitled to a monetary order for return of double the Deposits?

### Background and Evidence

The tenancy began on July 1, 2018. Rent in the amount of \$2,300.00 was payable on the first of each month. A security deposit of \$1,150.00 and a pet damage deposit of \$1,150.00 were paid by the tenant.

The tenant testified that they vacated the premises on August 31, 2019 . The tenant stated that they provided the landlord with a written notice of the forwarding address on July 30, 2019, when they gave written notice to end the tenancy.

The tenant stated that they authorized the landlord to retain from the Deposits, the amount of \$192.08 for utilities. The tenant stated that they agreed to no further deductions from the Deposits.

The tenant stated that the landlord sent them an etransfer in the amount of \$1,650.00 on or about September 15, 2019; however, the landlord had made further deductions from their Deposits. The tenant stated that they did not accept the etransfer as they thought they were accepting responsibility for the unauthorized deductions.

The landlord agreed that they had the tenant's forwarding address when the tenant gave notice to end the tenancy. The landlord stated that they had the tenant's verbal consent to retain an undetermined amount for damages to the window, which was the amount of \$351.75 and they held \$100.00 for damages to the carpet, which the tenant was going to rectify.

The tenant argued that they did not agree they were responsible for the window or carpet and did not give the landlord their consent to retain those amounts.

### Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

Return of security deposit and pet damage deposit is defined in Part 2 of the Act.

### **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.

...

(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, or**

(b) after the end of the tenancy, the director orders that the landlord may retain the amount.

(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.

The parties agreed that the landlord was authorized to retain the amount of \$192.08 for utilities from the Deposits.

The parties disagreed that the landlord was authorized to deduct the amounts of \$351.75 and \$100.00 from the Deposits. As the parties disagreed on this issue and the Act requires the landlord to have written consent to retain any amount from the Deposits, I find the landlord has breached section 38 of the Act, when they withheld the amount of \$451.75, as they did not have the written consent of the tenant.

Section 38(6) provides that if a landlord does not comply with section 38(1), the landlord must pay the tenant double the amount of the Deposits. The legislation does not provide any flexibility on this issue.

Therefore, I must order, pursuant to section 38 of the Act, that the landlord pays the tenant the sum of **\$4,315.84**, comprised of double the Deposits, less the amount authorized to retain and to recover the \$100.00 fee for filing this Application.

The tenant is given a formal monetary order pursuant to 67 of the Act, in the above terms and the landlord must be served with a copy of this order as soon as possible. Should the landlord fail to comply with this order, the order may be filed in the small claims division of the Provincial Court and enforced as an order of that court.

The **landlord is cautioned** that costs of such enforcement are recoverable from the landlord.

### Conclusion

The tenant's application for return of double the Deposits is granted. The tenant is granted a monetary order in the above noted amount.

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: February 19, 2020

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Residential Tenancy Branch