



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNSD, FF

### Introduction

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

- a monetary order for the return of double the security and pet damage deposits pursuant to section 38 and 67 of the Act;
- authorization to recover her filing fee for this application from the landlord pursuant to section 72.

The tenant attended the hearing via conference call and provided testimony. A.J. attended the hearing via conference call and identified himself as counsel for the named tenant. Counsel stated that he was retained only 1 week ago and on instructions from the landlord seek an adjournment to the hearing. Counsel stated that the landlord is in bereavement due to losing two family member to "death by suicide"; one in December 2019 and one in February 2020. Counsel stated that the landlord because of these incidents was unable to properly respond to the tenant's application. As such, the landlord seeks an adjournment of the hearing for 6 weeks. The tenant disputed the request for an adjournment stating that the application was filed on October 25, 2019 and served upon the landlord. The tenant pointed out that the landlord's issue did not occur until December 2019 and February 2020. Counsel was unable to provide any details of why the landlord failed to respond to the application for dispute with approximately 6 weeks between receiving notice of the dispute and the family bereavement in December 2019.

Both parties were informed that the landlord's request for an adjournment was granted due to the circumstances described by counsel. Both parties were advised that an interim decision would be issued and with a notice of an adjournment letter detailing a

new date and time for the adjourned hearing. Both parties were notified that the adjournment would not take place within the next two weeks, but could take place sooner than 6 weeks and was dependent on schedule availability. Both parties were advised that the landlord's late evidence would be allowed only if submitted to the Residential Tenancy Branch and served upon the tenant within 2 weeks by 4pm on March 23, 2020.

On May 11, 2020 the hearing was resumed with both the tenant and the landlord via conference call.

At the outset, the landlord's submission of 4 late documentary evidence package(s) was addressed. The landlord stated that the submitted evidence was in relation to damage caused by the tenant during the tenancy. On this basis, I find that the landlord failed to comply with this Arbitrator's decision on the submission of late evidence by the March 23, 2020 deadline. The landlord failed to give any details of how this evidence was relevant to the tenant's application. On this basis, the landlord's late documentary evidence is excluded from consideration on this decision.

At the conclusion of the hearing, it was noted that the tenant failed to make any reference to any of her submitted documentary evidence. The hearing was conducted using only the direct testimony of both parties.

#### Issue(s) to be Decided

Is the tenant entitled to a monetary order for return of double the security and pet damage deposits and recovery of the filing fee?

#### Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

Both parties confirmed that the tenancy ended on August 31, 2019 and that the tenant paid a \$900.00 security and a \$250.00 pet damage deposit to the landlord which is still currently held by the landlord as of the date of this hearing.

The tenant seeks a monetary claim of \$2,400.00 which consists of:

\$900.00

Return of Original Security Deposit

\$250.00	Return of Original Pet Damage Deposit
\$900.00	Compensation, Sec. 38 (6), Fail to Comply
\$250.00	Compensation, Sec. 38 (6), Fail to Comply
\$100.00	Filing Fee
\$2,500.00	Total

The tenant stated that the landlord was provided with the tenant's forwarding address in writing for return of the security and pet damage deposits in a letter via Canada Post Mail. The landlord confirmed that she received the letter dated October 25, 2019 in the mail sometime in early November 2019.

Both parties confirmed that the tenant did not consent for the landlord to retain the combined deposits nor has the landlord filed an application for dispute within the allowed 15 day time period.

### Analysis

Section 38 of the Act requires the landlord to either return all of a tenant's security deposit or file for dispute resolution for authorization to retain a security deposit within 15 days of the end of a tenancy or a tenant's provision of a forwarding address in writing. If that does not occur, the landlord is required to pay a monetary award pursuant to subsection 38(6) of the Act equivalent to the value of the security/pet deposits.

In this case, I accept the testimony of both parties and find that the tenancy ended on August 31, 2019 and that the landlord currently holds the combined deposits of \$1,150.00. I also find that the tenant provided her forwarding address in writing in a letter dated October 25, 2019 which the landlord confirmed receiving in early November 2019. The landlord confirmed in her direct testimony that she did not return the combined deposits, nor did she file an application to dispute its return within the allowed 15 day period.

On this basis, I find that the tenant has established a claim for return of the \$950.00 security deposit and the \$200.00 pet damage deposit held by the landlord for a combined total of \$1,150.00.

I also find pursuant to section 38(6) that the tenant is entitled to compensation to an amount equal to the security/pet deposits as the landlord has failed to comply with section 38 (1) of \$1,150.00.

The tenant having been successful is also entitled to recovery of the \$100.00 filing fee.

Conclusion

The tenant is granted a monetary order for \$2,400.00.

This order must be served upon the landlord. Should the landlord fail 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 *Residential Tenancy Act*.

Dated: May 11, 2020

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Residential Tenancy Branch