



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNSD, FFT

### Introduction

On November 14, 2019 the tenant submitted an Application for Dispute Resolution under the *Residential Tenancy Act* (the “*Act*”) for the landlord to return all or part of the pet damage deposit or security deposit, for money owed as compensation for damage or loss, and to recover the filing fee for the Application. The matter proceeded by way of a hearing pursuant to section 74(2) of the *Act* on April 7, 2020. In the hearing conference call I explained the process and provided each party the opportunity to ask questions.

One of the tenants and the landlord attended the hearing, and I provided the opportunity for each to present oral testimony and make submissions during the hearing.

The landlord confirmed receipt of the tenants’ Application. The tenant stated they handed it to a family member of the landlord which the landlord confirmed. The tenant acknowledged receipt of the landlord’s evidence package via registered mail.

### Issue(s) to be Decided

Are the tenants entitled to an Order granting a refund of double the amount of the security deposit and pet damage deposit pursuant to section 38(1)(c) of the *Act*?

Are the tenants entitled to recover the filing fee for this Application pursuant to section 72 of the *Act*?

### Background and Evidence

I have reviewed all evidence and oral submissions before me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this section.

Both the tenant and the landlord agreed to the terms of the tenancy agreement. The landlord submitted a copy of the agreement signed by both parties on April 16, 2019. The tenancy began on April 16, 2019, for a fixed length of time ending on April 15, 2020. The rent amount was set at \$1,400.00 per month payable on the 16<sup>th</sup> of each month. A security deposit of \$700.00 was paid on April 16, 2019.

The tenant gave their account of the start of the tenancy and the months following. They confirmed the \$700.00 security deposit. There was the addition of a \$500.00 pet deposit, to be paid in \$50 increments over the length of the tenancy. In total for the time they stayed in the unit, two payments were made toward this amount, for \$100.00 that they request be added to the claim.

The tenant notified the landlord of their desire to move out and assisted in finding new tenants for the unit. Both the landlord and tenant attended on the final day of the tenancy on October 31, 2019. There was the matter of a flooded bathroom, damage on a windowsill and damages on walls. There was no formal Condition Inspection Report (the "report") presented either at the start or end of tenancy.

The tenant confirmed they received \$600.00 from the landlord, about one week after the move out. According to the tenant, the landlord stated this is what they were doing, without asking for the tenant's agreement. The tenant ascribed all the damages and flaws to "simple wear and tear" and for this reason asks for the remainder of the sum of pet and security deposit to be repaid.

The tenants claim \$250.00 on their Application. The evidence presented in the hearing is that the landlord offered \$50.00 to the tenant for incidental work from a contractor to the unit that led to disorder. This additional \$50.00 is added to the total amount claimed by the tenants, above the remainder of the deposits not paid by the landlord.

The landlord confirmed details of the tenant's account. They provided a quote for unit repairs at the end of the tenancy for \$600.00. This was from wall-patching that the tenant's relation had repaired, and scratches from a pet on another wall. There was also damage in the bathroom from standing water.

The landlord deducted only \$250.00 from the security and pet deposit amount combined. The landlord stated this was out of consideration for the tenant. The landlord confirmed they did not make a claim against the deposits.

### Analysis

The *Act* section 38(1) states that within 15 days after the later of the date the tenancy ends, or the date the landlord receives the tenant's forwarding address in writing, the landlord must repay any security or pet damage deposit to the tenant or make an Application for Dispute Resolution for a claim against any deposit.

Further, section 38(6) of the *Act* provides that if a landlord does not comply with subsection (1), a landlord must pay the tenant double the amount of the security and pet damage deposit.

The total of the deposits, and the \$50.00 promised by the landlord, is \$850.00. The landlord agreed to these amounts in the hearing, stating they retained only \$250 and returned \$600 out of consideration to the tenant.

I accept that the landlord had the tenants' forwarding address by the time the tenancy ended. I make this finding because at least one week after moving out, the tenant received the landlord's cheque for \$600.00. The landlord gave this timeline as "by mid-November".

By virtue of the notice of this hearing, the landlord also received the tenant's forwarding address on or very near to the date the tenant applied for dispute resolution. I find this affords the landlord the timeframe to either file for dispute resolution in order to make a claim or repay the pet and security deposit. I accept the landlord's testimony that he did not file a claim against the deposit and returned \$600.00 to the tenants.

Additionally, the landlord advised they sent their evidence to the tenant via registered mail. I find this proves on a balance of probabilities that the landlord had the tenant's forwarding address and could have filed a claim against the deposit within the specified timeframe of 15 days of either the end of the tenancy; one week later; or from the time they received the tenants' Application for Dispute Resolution.

Even though the landlord asserts damage to the unit due to the tenant, this hearing is not to determine the landlord's right to claim against the deposit. Rather, my determination shall be whether the landlord did what is required by the *Act* in relation to the disposition of the security deposit at the end of the tenancy.

The landlord did not apply for dispute resolution within 15 days of either the end of tenancy or receiving the tenant's forwarding address. I find there was no agreement that the landlord could retain any amount of the security deposit or pet damage deposit.

The landlord's actions are a breach of the *Act*. The landlord must pay the tenant double the amount of the security deposit and pet damage deposit. This amount is \$850.00. As per section 38(6) of the *Act*, the landlord must pay the tenant double this amount. This is \$1,700.00.

The landlord returned \$600.00 to the tenant approximately one week after the end of tenancy. I deduct this amount from the compensation amount to the tenant.

The total amount of compensation from the landlord to the tenant is \$1,100.00.

The *Act* section 72 grants me the authority to order the repayment of a fee for the Application. As the tenants were successful in their claim, I find they are entitled to recover the filing fee from the landlord.

### Conclusion

I order the landlord to pay the tenants the amount of \$1,200.00 which includes \$1,100.00 for the remainder security and pet deposits and the \$100.00 filing fee. I grant the tenants a monetary order for this amount. The tenants must serve this order to the landlord to demand payment. Should the landlord fail to comply with this monetary order may be filed in the Provincial Court (Small Claims) 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 13, 2020

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Residential Tenancy Branch