



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding CAPREIT  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNSDB-DR FFT

### Introduction

This hearing was convened as a result of the tenants' Application for Dispute Resolution (application) seeking remedy under the *Residential Tenancy Act* (the Act). The tenants applied for the return of double their security deposit and pet damage deposit, plus the recovery of the cost of the filing fee through the Direct Request process. On May 5, 2020, an adjudicator wrote an Interim Decision, adjourning this matter to a participatory hearing due to discrepancies in the Direct Request application. The May 5, 2020 Interim Decision should be read in conjunction with this decision.

On this date, June 9, 2020, the participatory hearing was held and the tenants and an agent for the corporate landlord AG (agent) attended the teleconference hearing and were affirmed. The hearing process was explained to the parties and an opportunity to ask questions was provided. During the hearing the parties provided affirmed testimony and their documentary evidence, if the party submitted documentary evidence. A summary of the evidence is provided below and includes only that which is relevant to the hearing. Words utilizing the singular shall also include the plural and vice versa where the context requires.

Neither party raised any concerns regarding documentary evidence.

### Preliminary and Procedural Matter

The parties confirmed their respective email addresses at the outset of the hearing and stated that they understood that the decision would be emailed to both parties. In addition, the tenants are advised that the monetary order will be sent by email to the tenants only for service on the landlord.

### Issues to be Decided

- Are the tenants entitled to the return of double their security deposit and pet damage deposit under the Act?
- Are the tenants entitled to the recovery of the cost of the filing fee under the Act?

### Background and Evidence

A copy of the tenancy agreement was submitted in evidence. A fixed-term tenancy began on January 1, 2018 and reverted to a month to month tenancy after December 31, 2019. The monthly rent was \$1,675.00 before parking fees and was due on the first day of each month. The parties confirmed that the tenants paid a security deposit of \$837.50 and a pet damage deposit of \$837.50 at the start of the tenancy.

The parties agreed that the tenants provided their written forwarding address on the outgoing Condition Inspection Report on April 2, 2020. The agent confirmed that the landlord issued a cheque to the tenants in the amount of \$1,425.00 on April 29, 2020. The tenants stated that they received the cheque of \$1,425.00 on May 4, 2020 and cashed it. There is no dispute that the tenants did not give the landlord written permission to deduct \$250.00 or any other amount from their combined deposits of \$1,675.00. The agent confirmed that the landlord did not have written permission to deduct any amount from the combined deposits and the landlord has not applied for dispute resolution claiming towards either of the deposits.

### Analysis

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

#### *Test for damages or loss*

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in sections 7 and 67 of the Act. Accordingly, an applicant must prove the following:

1. That the other party violated the Act, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,

4. That the party making the application did what was reasonable to minimize the damage or loss.

In this instance, the burden of proof is on the tenants to prove the existence of the damage/loss and that it stemmed directly from a violation of the Act, regulation, or tenancy agreement on the part of the landlord. Once that has been established, the tenant must then provide evidence that can verify the value of the loss or damage. Finally, it must be proven that the tenant did what was reasonable to minimize the damage or losses that were incurred.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

Having considered the documentary evidence and testimony, sections 38(1) and 38(6) of the Act apply and state:

**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.

**(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.**

[Emphasis added]

The agent confirmed that the landlord did not claim against the tenants' security deposit or pet damage deposit (combined deposits) or return the full combined deposits of \$1,675.00 within 15 days of April 2, 2020, which is the date the agent confirmed the

landlord had the tenants' written forwarding address. Under section 38 of the Act, the landlord has 15 days to return the tenants' combined deposits from the **later** of the end of tenancy or the written forwarding address and I find in the matter before me, as the written forwarding address was received by the landlord on April 2, 2020 and the end of tenancy date was March 31, 2020, I find the later date is April 2, 2020. Therefore, I find the landlord had until April 17, 2020 to return the tenants' combined deposits, and the landlord only returned \$1,425.00 on April 29, 2020, which is 12 days too late.

Therefore, I find the landlord breached section 38(1) of the Act and I find the tenants are entitled to the return of **double** their \$1,675.00 combined deposits for a total of \$3,350.00 less the \$1,425.00 amount already paid for a balance owing to the tenants in the amount of **\$1,925.00**. I note that the combined deposits have accrued \$0.00 in interest since the start of the tenancy. I find the tenants have met the burden of proof based on the above.

As the tenants paid a filing fee of \$100.00 and their application was successful, I grant the tenants **\$100.00** pursuant to section 72 of the Act for the full recovery of the filing fee.

**Monetary Order** – I find that the tenants have established a total monetary claim in the amount of **\$2,025.00**, comprised of \$1,925.00 for the net doubling of the combined deposits, which includes the deduction for the amount already paid by the landlord, plus the \$100.00 filing fee. I grant the tenants a monetary order pursuant to section 67 of the Act in the amount of \$2,025.00.

**I caution** the landlord not to breach section 38(1) of Act in the future.

### Conclusion

The tenants' application is fully successful.

The tenants have established a total monetary claim of \$2,025.00 as indicated above.

The landlord has been cautioned to comply with section 38(1) of the Act in the future.

This decision will be emailed to both parties. The monetary order will be emailed to the tenants only for service on the landlord. Should the tenants require enforcement of this order, this order must be served on the landlord 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: June 9, 2020

---

Residential Tenancy Branch