



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding KILLAM INTERNATIONAL LTD.  
and [tenant name suppressed to protect privacy]

## **DECISION**

### **Dispute Codes**

MNDCT, MNSD

### **Introduction**

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Tenant on February 27, 2020 (the "Application"). The Tenant applied for return of the security and pet damage deposits as well as compensation for monetary loss or other money owed.

The Tenant appeared at the hearing. The Agent for the Landlord appeared at the hearing. I explained the hearing process to the parties. The parties provided affirmed testimony.

Both parties submitted evidence prior to the hearing. I addressed service of the hearing package and evidence and no issues arose.

The parties were given an opportunity to present relevant evidence and make relevant submissions. I have considered the documentary evidence and all oral testimony of the parties. I have only referred to the evidence I find relevant in this decision.

During the hearing, the Tenant confirmed she is seeking return of double the deposits if I find the Landlord failed to comply with the *Residential Tenancy Act* (the "Act").

### **Issues to be Decided**

1. Is the Tenant entitled to return of double the security and pet damage deposits?
2. Is the Tenant entitled to compensation for monetary loss or other money owed?

### Background and Evidence

The parties agreed on the following. There was a written tenancy agreement in this matter. The tenancy was for a fixed term of one year. Rent was \$2,195.00 due on the first day of each month. The Tenant paid a \$1,098.00 security deposit and \$549.00 pet damage deposit.

The Tenant testified that the tenancy started April 01, 2017. The Agent testified the tenancy started March 09, 2017.

The parties agreed the tenancy ended March 31, 2018.

The parties agreed the Tenant provided a forwarding address on the Condition Inspection Report (the "CIR") on March 31, 2018.

The Agent acknowledged the Landlord did not have an outstanding monetary order against the Tenant at the end of the tenancy. The parties agreed the Tenant did not agree in writing at the end of the tenancy that the Landlord could keep some or all of the security or pet damage deposits.

The Agent acknowledged the Landlord did not apply to the RTB to keep the security or pet damage deposit.

The parties agreed that the Landlord sent the Tenant a cheque for \$1,172.00 on April 11, 2018; however, then stopped payment on the cheque such that the Tenant did not actually receive the money.

The Agent testified that the Landlord sent another cheque to the Tenant in March of 2020 for the full amount of the security and pet damage deposits. The Tenant testified that she has not received this cheque.

The parties agreed that someone for the Landlord and the Tenant did a move-in inspection March 09, 2017.

The parties agreed that someone for the Landlord and the Tenant did a move-out inspection March 31, 2018.

The Tenant sought \$20.00 from the Landlord for the cost of purchasing a filter for the hood fan above the stove in the rental unit. The Tenant testified that the filter was not

new when she moved in. She testified that she cleaned the filter. The Tenant testified that she was required to replace the filter when she moved out and that this cost \$19.99. The Tenant submitted that she should not be responsible for this cost because the filter was not new when she moved in.

The Agent testified that the filter was new when the Tenant moved in. She testified that the filter needs to be replaced every year or so. The Agent referred to a cleaning guideline and the CIR.

In reply, the Tenant submitted that the CIR does not say anything about a filter.

### Analysis

Section 38 of the *Act* sets out the obligations of a landlord in relation to security and pet damage deposits held at the end of a tenancy.

Section 38(1) requires a landlord to return the security and pet damage deposits in full or claim against them within 15 days of the later of the end of the tenancy or the date the landlord receives the tenant's forwarding address in writing. There are exceptions to this outlined in sections 38(2) to 38(4) of the *Act*.

Based on the testimony of the parties, I am satisfied the tenancy ended March 31, 2018.

Based on the testimony of the parties, I am satisfied the Tenant provided a forwarding address on the CIR on March 31, 2018.

The Landlord had 15 days from March 31, 2018 to repay the deposits in full or file a claim against the deposits. The Landlord had until April 15, 2018 to do one of these two things.

The parties agreed the Landlord sent the Tenant a cheque for \$1,172.00 April 11, 2018. However, the parties also agreed the Landlord then stopped payment on the cheque such that the Tenant did not actually receive the money. Given this, I find the Landlord did not return any of the deposits by April 15, 2018.

The Agent testified that the Landlord sent the Tenant a cheque for the deposits in March of 2020. The Tenant testified that she had not received this. The Agent did not take the position that the cheque had been cashed. Therefore, I am satisfied that, at the time of the hearing, the Landlord had not returned any of the deposits.

I am satisfied the Landlord did not file a claim against the deposits by April 15, 2018 as the Agent acknowledged the Landlord did not apply to the RTB to keep the security or pet damage deposits.

Given the above, I find the Landlord did not return the deposits or file a claim against them by April 15, 2018 as required. Therefore, the Landlord failed to comply with section 38(1) of the *Act*.

Sections 38(2) to 38(4) of the *Act* state:

(2) Subsection (1) does not apply if the tenant's right to the return of a security deposit or a pet damage deposit has been extinguished under section 24 (1) [tenant fails to participate in start of tenancy inspection] or 36 (1) [tenant fails to participate in end of tenancy inspection].

(3) A landlord may retain from a security deposit or a pet damage deposit an amount that

(a) the director has previously ordered the tenant to pay to the landlord, and

(b) at the end of the tenancy remains unpaid.

(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...

Based on the testimony of the parties, I am satisfied the Tenant participated in the move-in and move-out inspections. Therefore, the Tenant did not extinguish her rights in relation to the security or pet damage deposits. Section 38(2) of the *Act* does not apply.

Based on the testimony of the Agent, I find the Landlord did not have an outstanding monetary order against the Tenant at the end of the tenancy. Section 38(3) of the *Act* does not apply.

Based on the testimony of the parties, I find the Tenant did not agree in writing at the end of the tenancy that the Landlord could keep some or all of the security or pet damage deposits. Section 38(4) of the *Act* does not apply.

Given the above, I find the Landlord failed to comply with section 38(1) of the *Act* in relation to the security and pet damage deposits and that none of the exceptions outlined in sections 38(2) to 38(4) of the *Act* apply. Therefore, the Landlord is not permitted to claim against the security or pet damage deposits and must return double the deposits to the Tenant pursuant to section 38(6) of the *Act*.

The Landlord must return \$3,294.00 to the Tenant. There is no interest owed on the security or pet damage deposits as the amount of interest owed has been 0% since 2009.

In relation to the filter, I am satisfied based on the Guideline to Cleaning Before Vacating Townhouse that tenants are expected to replace the filter for the stove vent hood at the end of the tenancy. The CIR does not show that there was an issue with the filter or cleanliness of the filter on move-in. Based on these two things, I am satisfied the filter was new or in satisfactory condition on move-in. The Agent testified that the filter should be replaced every year or so. The Tenant did not submit sufficient evidence to show this is not accurate. This is the Tenant's application and the Tenant has the onus to prove it. I am not satisfied it was unreasonable to require the Tenant to replace the filter at the end of the tenancy. The replacement was necessary due to the Tenant's use of the appliance. The cost of replacement was minimal. I am not satisfied the Landlord is responsible for reimbursing the Tenant for this cost.

### Conclusion

The Landlord must return \$3,294.00 to the Tenant and I issue the Tenant a Monetary Order in this amount. This Order must be served on the Landlord as soon as possible. If the Landlord fails 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 *Act*.

Dated: July 09, 2020

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Residential Tenancy Branch