



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNSD, MNDCT

### Introduction

The tenant filed an Application for Dispute Resolution on June 22, 2020 seeking a monetary order for the security deposit repayment and compensation for monetary loss or other money owed. The matter proceeded by way of a hearing pursuant to section 74(2) of the *Residential Tenancy Act* (the “Act”) on October 13, 2020.

Both parties attended the conference call hearing. I explained the process and both parties had the opportunity to ask questions and present oral testimony during the hearing.

The tenant who attended the hearing provided a Proof of Service document to show they served notice of this hearing and their evidence by hand delivery directly to the landlords on June 26, 2020. A witness statement accompanied this document to state the same. The landlords confirmed they received the tenant’s evidence package. The tenants later prepared digital evidence and sent this to the landlords via registered mail on September 23, 2020.

The landlords provided their documentation directly to the tenant and the tenant confirmed this in the hearing. The landlords provided that they sent their evidence to the Residential Tenancy Branch within the required time limit. By the time of the hearing, their evidence was not before me. I assured the landlords that I would make no decision without ensuring their evidence was before me. By October 15, 2020, the landlords’ evidence, amounting to 89 pages in total, was uploaded to the system. I have reviewed that documentation and make reference to specific pieces of that evidence below.

### Issue(s) to be Decided

Is the tenant entitled to a monetary order for damage or compensation pursuant to section 67 of the *Act*?

Is the tenant entitled to an Order granting a refund of double the amount of the security deposit and pet damage deposit pursuant to section 38 of the *Act*?

### Background and Evidence

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

The landlords and tenant both submitted the following important documents:

- the residential tenancy agreement, signed by the parties on October 30, 2019 for the tenancy starting on November 8, 2019 – this shows the rent amount of \$1075.00 payable on the 1<sup>st</sup> of each month. The documents shows a paid security deposit of \$537.50 – this is a carryover from the original payment to the previous owners in 2017
- a Condition Inspection Report, completed on November 9, 2019, lists miscellaneous items in the rental unit – it also shows the security deposit amount of \$537.50 on November 8, 2019
- a Condition Inspection Report showing the move-out inspection date of May 31, 2020 – this provides the tenant's postal box forwarding address at the end of the tenancy
- a handwritten document entitled "Damage Deposit" dated June 9, 2020 – this shows a list of damages (proper cleaning, screen door, window #3, washer/dryer hoses) totalling \$1,011.48. Minus the security deposit, this leaves "owing \$473.98". This also shows: "returned to [the tenant]: Ø"
- A handwritten note of the landlord dated June 9, 2020 gives their account of the inspection meeting of May 29, 2020 – "[the tenant] saying they would complete finish inspection on the 31<sup>st</sup>. [They were] no show. . . falsely claiming I was confrontational."

The landlord's documentation contains a 'Buyer Statement of Adjustments' dated November 22, 2019 showing the damage deposit credited to the new buyer: \$537.50."

The landlords also provided a written submission dated October 1, 2020. They confirm the damage deposit amount paid is \$537.50, evidence in the contract from the lawyer when they purchased the property. They stated there was no pet damage deposit paid in cash; instead, the tenant performed cleaning "in lieu of" this amount.

They also described the tenant and landlords' meeting to inspect the rental unit: ". . . the walk thru on May 29, 2020 . . . was abruptly stopped. . . Then I did the walk thru again on May 30, 2020. Which they refused to show." The landlord states: "I am also pointing out there was never a Pet Deposit charged or received from [the tenant]."

In the hearing, the landlord stated they returned to the unit on May 31 to find things "altered" and the tenant did not return keys. They stated the tenant gave their forwarding address. They provided a list of items needed (referred to above dated June 9, 2020). They did not file a claim as per the *Act* against the security deposit – this was because the damage "far exceeded what the deposit was".

The tenant's documentation shows the payment of the original damage deposit to then previous landlord dated June 2, 2017: \$537.50. They also provided a receipt and a description of the cleaning and carpet shampoo they paid on May 23, 2020: \$217.50.

In the hearing, the tenant reviewed their total claim amount. This is: \$163 for preparation of materials for this hearing (receipts provided); \$217.50 cleaning; and \$1,075.00 which is the security deposit amount and pet deposit amount. In the hearing they confirmed there was no cash payment of a pet deposit; instead, the original owner in 2017 let them in early to clean: "the owner did not want a pet deposit." The total amount of their claim is \$1,455.50.

The tenant provided a handwritten account of the "walk thru inspection of property" on May 29, 2020. That meeting concluded with "[the landlord] texted me at 2:20 pm on May 29, 2020 demanding the next walk thru on May 31 at 7pm."

### Analysis

The *Act* section 35 provides that a landlord and tenant together must inspect the condition of the unit on a mutually agreed day.

The landlord submits evidence and gave their account to state the tenant did not show to a second scheduled condition inspection meeting. They both provide an account of the first meeting on May 29 in which there was disagreement about damage. The tenant confirmed they did not attend a second meeting.

Given both these accounts, I find the condition inspection meeting was completed as required by section 35. Disagreement on the items did not necessitate further inspection. I find the tenant not attending to a second meeting does not disqualify them from receiving a return of

the security deposit for that reason. A meeting was held on May 29 with both parties taking significant steps at examining damage and repairs involved. This satisfies the *Act's* condition inspection provisions.

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.

I find the tenant provided a forwarding address to the landlord by May 31, 2020. This is shown on the Condition Inspection Report of that date. A local post office box number is a forwarding address. For the purposes of completing the report document, it was set out as such.

In the hearing the landlords confirmed they did not make a claim against the security deposit. Their documentation shows "the damage far exceeded what the deposit was." Moreover, they did not return any portion of the security deposit to the tenant at the end of tenancy. The evidence for this is the June 9 document that shows: "returned to [the tenant]: Ø"

The tenant did not pay an initial pet deposit. Work or cleaning done in advance of the actual tenancy start date is not an assessable amount. I find as fact there was no cash amount paid. Whatever arrangement the tenant made with previous owners in 2017 shall not prejudice the landlords in this tenancy matter. Therefore, with no exchange of money, I make no award of an amount considered to be a pet damage deposit.

I find the tenant provided the forwarding address to the landlord by May 31, 2020. The landlord did not apply for dispute resolution within 15 days of receiving this forwarding address. I find there was no agreement that the landlord could retain any amount of the security deposit or pet damage deposit.

I find the landlord's actions at the end of the tenancy constitute a breach of section 38 of the *Act*. The landlord must pay the tenant double the amount of the security deposit, as per section 38(6) of the *Act*.

The *Act* section 37 sets out a tenant's obligations at the end of a tenancy. They must "leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear." Certainly, the parties disagree on what damage was pre-existing, or what the tenant replaced

or repaired during the term of the tenancy. The tenant's detailed list of work completed at the end of tenancy, on May 23, 2020 from 2 – 645pm, is in line with this responsibility. The work list contains washing and wiping extensively throughout the unit and the cleaner who provided the list described it as "required cleaning." There is no award for this cleaning amount (\$217.50) which the *Act* delineates as the tenant's responsibility at the end of tenancy.

The tenant claimed \$163 for preparation of materials and costs for sending materials. The *Act* does not provide for recovery of other costs associated with serving hearing documents – therefore, the cost of preparation and registered mail is not recoverable.

### Conclusion

Pursuant to sections 67 of the *Act*, I grant the tenant a Monetary Order in the amount of \$1,075.00, for double the amount of the security deposit. The tenants are provided with this Order in the above terms and the landlords must be served with **this Order** as soon as possible.

Should the landlords fail to comply with this Order, this 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: October 19, 2020

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Residential Tenancy Branch