



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Portagewest Living Inc and  
[tenant name suppressed to protect privacy]

## DECISION

Dispute Codes      **MNDL-S, MNRL-S, FFL**

### Introduction

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

- a monetary order for damage to the rental unit pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The landlord did not attend this hearing which lasted approximately 20 minutes. The tenant attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

### Issue(s) to be Decided

Is the landlord entitled to any of the relief sought?

### Background and Evidence

The tenant provided undisputed evidence regarding the following facts. This fixed-term tenancy began in December, 2019. The tenant paid a security deposit of \$900.00 and pet damage deposit of \$900.00 at the start of the tenancy.

The tenant provided their forwarding address prior to the tenancy ending on July 31, 2020. The tenant did not provide written authorization that the landlord may retain any portion of the security or pet damage deposit for this tenancy. The landlord has

returned the amount of \$535.00 but has retained \$1,265.00 of the deposits for this tenancy.

### Analysis

The landlord did not attend the hearing which was scheduled by conference call at 1:30pm. Rule 7.3 of the Rules of Procedure provides that:

If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application with or without leave to re-apply.

Consequently I dismiss the landlord's application without leave to reapply.

Residential Tenancy Policy Guideline 17 provides in part that, "on a landlord's application to retain all or part of the security deposit...the arbitrator will order the return of the deposit or balance of the deposit, as applicable, ***whether or not the tenant has applied for dispute resolution for its return.***"

Section 38 of the *Act* requires the landlord to either return the tenant's security deposit in full or file for dispute resolution for authorization to retain the deposit 15 days after the later of the end of a tenancy or upon receipt of the tenant's forwarding address in writing. If that does not occur, the landlord must pay a monetary award, pursuant to section 38(6)(b) of the *Act*, equivalent to double the value of the security deposit.

In the present circumstance, I accept the evidence that this tenancy ended on July 31, 2020 and the landlord filed their application for authorization to retain the deposits on August 10, 2020. As such, I find that the landlord was within the 15 days of the end of the tenancy to file an application.

I accept the undisputed evidence of the tenant that they have not provided written authorization that the landlord may retain any portion of the security and pet damage deposit for this tenancy. I accept the evidence of the tenant that the landlord has withheld \$1,265.00 of the security and pet damage deposit. I accept the tenants' evidence that they have not waived their right to obtain a payment pursuant to section 38 of the *Act* as a result of the landlord's failure to abide by the provisions of that section of the *Act*.

Under these circumstances and in accordance with section 38 of the *Act*, I find that the tenant is entitled to a \$1,265.00 Monetary Order, the balance of the security and pet damage deposit withheld by the landlord. No interest is payable over this period.

### Conclusion

The landlord's application is dismissed without leave to reapply.

I issue a Monetary Order in the tenant's favour in the amount of \$1,265.00 against the landlord. The tenant is provided with a Monetary Order in the above terms and the landlord must be served with this Order as soon as possible. Should the landlord 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 *Residential Tenancy Act*.

Dated: November 27, 2020

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Residential Tenancy Branch