



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNSD FF

### Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution. A participatory hearing was held, via teleconference, on December 22, 2020. The Tenant applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- An order that the Landlord return all or part of the security deposit or pet damage deposit

The Tenant and the Landlord attended the hearing. All parties provided testimony and were provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. The Landlord confirmed receipt of the Tenant's Notice of Hearing and evidence and did not take issue with the service of those documents. The Landlord did not submit any documentary evidence.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence submitted in accordance with the rules of procedure, and evidence that is relevant to the issues and findings in this matter are described in this Decision.

### Issue(s) to be Decided

1. Is the Tenant entitled to an order that the Landlord return all or part of the security deposit or pet damage deposit?

### Background and Evidence

Both parties agreed that monthly rent was set at \$1,275.00, and was due on the first of the month. The parties confirmed that the Tenant paid a security and a pet deposit totalling \$1,275.00. The Landlord confirmed that he still holds this amount. The parties also confirmed that the Tenant left the rental on July 15, 2020.

The Landlord state he was able to re-rent the unit, starting on July 17, 2020, but it took a significant amount of his time to find new tenants. The Landlord feels he should be able to keep some of the deposits because the Tenant was under a fixed term lease until February 2021. However, the Landlord did not file an application against the deposit.

The Tenant stated she sent the Landlord her forwarding address in writing on August 19, 2020, by registered mail. The Landlord acknowledged getting this letter but does not recall the date.

The parties appear to have had several conversations over June and July 2020 about what amount of rent was to be paid for July, when the Tenant would move out, and what should be done with the deposits. However, no agreement was ever formally reached, in writing, with respect to what to do with the deposits, including any authorized deductions.

### Analysis

Based on the documentary evidence and oral testimony provided during the hearing, and on a balance of probabilities, I find:

Section 38(1) of the *Act* requires a landlord to repay the security deposit or make an application for dispute resolution within 15 days after receipt of a tenant's forwarding address in writing or the end of the tenancy, whichever is later. When a landlord fails to do one of these two things, section 38(6) of the *Act* confirms the tenant is entitled to the return of double the security deposit.

In this case, both parties confirmed that the Tenant moved out and abandoned the rental unit on July 15, 2020, which I find reflects the end of the tenancy. The Landlord confirmed that he got the Tenant's forwarding address in writing but could not recall when. Pursuant to section 88 and 90 of the *Act*, I find the Landlord is deemed served

with the Tenant's forwarding address in writing on August 24, 2020, the fifth day after its registered mailing.

I note there is no evidence showing the Landlord and the Tenant agreed, in writing, to any deduction from the deposits, despite having several conversations about it around the time the Tenant moved out. The Landlord also did not file an application against the deposits.

Pursuant to section 38(1) of the Act, the Landlord had 15 days from receipt of the forwarding address in writing (until September 8, 2020) to either repay the security and pet deposit (in full) to the Tenant or make a claim against it by filing an application for dispute resolution. The Landlord did neither and I find the Landlord breached section 38(1) of the Act.

Accordingly, as per section 38(6)(b) of the Act, I find the Tenant is entitled to recover double the amount of the security and pet deposits (\$1,275.00 x 2). Further, section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. Since the Tenant was successful in this hearing, I also order the Landlord to repay the \$100.00 fee the Tenant paid to make the application for dispute resolution.

In summary, I issued the Tenant a monetary order for \$2,650.00 based on the Landlord's failure to deal with the security deposit in accordance with section 38 of the Act.

The Landlord spoke to the fact he suffered monetary loss, due to the Tenant's breach of the fixed term lease. However, as explained during the hearing, the Landlord will have to file his own application for those issues to be heard, as this was only a hearing about the Tenant's application for the return of the deposits.

### Conclusion

I grant the Tenant a monetary order in the amount of \$2,650.00. This order must be served on the Landlord. If the Landlord fails to comply with this order the Tenant may file the order in the Provincial Court (Small Claims) and be 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: December 23, 2020