



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNSD, FF

### Introduction

On September 16, 2020, the Tenant submitted an Application for Dispute Resolution under the *Residential Tenancy Act* (“the Act”) for the Landlord to return of all or part of the pet damage deposit or security deposit, and to recover the filing fee for the Application.

The matter was scheduled as a teleconference hearing. The Tenant and Landlord appeared at the hearing.

The hearing process was explained, and the participants were asked if they had any questions. All participants in the hearing provided affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

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

### Preliminary and Procedural Matter

The Landlords assistant stated that she is not the Landlord and wanted to be removed from the Tenants application. The Tenant agreed to amend her application to remove the name of the Landlords assistant. The application was amended accordingly.

### Issue to be Decided

- Is the Tenant entitled to the return of a security deposit?

### Background and Evidence

The Tenant and Landlord testified that the tenancy began on December 1, 2019 as a one-year fixed term tenancy. Rent in the amount of \$1,600.00 was due to be paid to the Landlord by the first day of each month. The Tenant paid the Landlord a security deposit of \$800.00. The Landlord provided a copy of the tenancy agreement.

The Tenant moved out of the rental unit on August 31, 2020. The Tenant testified that the Landlord did not return the security deposit to her after the tenancy ended.

The Tenant testified that she provided the Landlord with her forwarding address in writing on July 27, 2020. The Tenant provided a copy of a letter sent to the Landlord dated July 27, 2020.

The Tenant testified that there was no agreement written or otherwise that the Landlords could retain any amount of the security deposit.

In reply, the Landlord testified that she did not return the security deposit to the Tenant and did not make an application for dispute resolution to make a claim against the security deposit.

The Landlords testified that she did receive the Tenant's forwarding address on July 27, 2020 and that there is no written agreement authorizing the Landlord to retain the security deposit.

The Landlord testified that she kept the security deposit because the Tenant ended the fixed term tenancy early and the Landlord suffered a loss of rental income.

### Analysis

Based on the evidence and testimony before me, and on a balance of probabilities, I find as follows:

Section 38(1) of the Act states that within 15 days after the later of the date the tenancy ends, and the date the Landlord receives the Tenant's forwarding address in writing, the Landlord must repay any security deposit or pet damage deposit to the Tenant with interest calculated in accordance with the regulations or make an application for dispute resolution claiming against the security deposit or pet damage deposit.

Section 38(6) of the Act provides that if a landlord does not comply with subsection (1), the landlord must pay the Tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

I find that the Tenant provided her forwarding address to the Landlord on July 27, 2020. I find that the Landlord did not repay the security deposit or apply for dispute resolution and make a claim against the deposit within 15 days of receiving the Tenant's forwarding address. I find that there was no written agreement from the Tenant authorizing the Landlord to retain an amount of the security deposit.

I find that the Landlord breached section 38 of the Act. Pursuant to section 38(6) of the Act, the Landlord must pay the Tenant double the amount of the security deposit.

Section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. I order the Landlord to repay the \$100.00 fee that the Tenant paid to make application for dispute resolution.

I order the Landlord to pay the Tenant the amount of \$1,700.00. I grant the Tenant a monetary order in the amount of \$1,700.00. This monetary order may be filed in the Provincial Court (Small Claims) and enforced as an order of that court. The Landlord is cautioned that costs of such enforcement are recoverable from the Landlord.

### Conclusion

The Landlord failed to make a claim against the security deposit or return the deposit to the Tenant in accordance with the legislation. The amount of the security deposit doubles as a penalty.

The Tenant is granted double the amount of the security deposit and the cost of the filing fee. I grant the Tenant a monetary order in the amount of \$1,700.00.

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: January 08, 2021

---

Residential Tenancy Branch