



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNSDS-DR, FFT

### Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act"), for the return of double the security deposit that the Landlord is holding in part without cause; and to recover the \$100.00 cost of his Application filing fee.

The Landlord and the Tenant appeared at the teleconference hearing, although the Tenant called in seven minutes late. I explained the hearing process to the Parties and gave them an opportunity to ask questions about the hearing process. During the hearing the Tenant and the Landlord were given the opportunity to provide their evidence orally and to respond to the testimony of the other Party. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure ("Rules"); however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Neither Party raised any concerns regarding the service of the Application for Dispute Resolution or the documentary evidence. Both Parties said they had received the Application and/or the documentary evidence from the other Party and had reviewed it prior to the hearing.

### Preliminary and Procedural Matters

The Tenant provided the Parties' email addresses in the Application, and they confirmed them in the hearing. They also confirmed their understanding that the Decision would be emailed to both Parties and any Orders sent to the appropriate Party.

At the outset of the hearing, I advised the Parties that pursuant to Rule 7.4, I would only consider their written or documentary evidence to which they pointed or directed me in the hearing.

Issue(s) to be Decided

- Is the Tenant entitled to a monetary order, and if so, in what amount?
- Is the Tenant entitled to recovery of the \$100.00 Application filing fee?

Background and Evidence

The Parties agreed that the fixed-term tenancy began on June 1, 2020, and was to run to June 30, 2021. It had a monthly rent of \$1,900.00, due on the first day of each month. The Parties agreed that the Tenant paid the Landlord a security deposit of \$950.00, and a pet damage deposit of \$950.00.

The Parties agreed that the Tenant vacated the rental unit on August 31, 2020, and gave the Landlord his forwarding address via text on August 30, 2020, as well as writing it in the condition inspection report ("CIR").

The Parties agreed that the Landlord returned the Tenant's pet damage deposit in full. They agreed that on September 22, 2020, the Landlord returned \$920.00 of the Tenant's security deposit. The etransfer of these funds was accompanied by a note from the Landlord saying: "Security deposit returned minus garbage disposal costs as per discussed but no charge for dog urine in carpet."

In the hearing, the Landlord said that she had a medical emergency involving her son in the early part of September 2020, but that she kept in close contact with the Tenant via text messages.

The Landlord said:

On Friday the 18<sup>th</sup>, I said "Hi [Tenant], The total returned \$930 – bag of garbage and other debris had to be taken to the dump." Although I acknowledged it was late, it was not being held, and in spirit of the Regulation, it's meant to be for Landlords who are withholding the deposit illegally. I was trying to manage a very urgent business at the time. He was made aware of this on the 18<sup>th</sup> and the deposit was made on the 22<sup>nd</sup>. I could not wrap my head around anything else except for my son at the time.

On 18<sup>th</sup> I let him know that I will be giving the deposit back, but he left about 7 – 8 large black garbage bags and other debris, which I had to dispose of. Payment was made on the 22<sup>nd</sup> and his filing was done on the 24<sup>th</sup>. It was my emergency

situation that I didn't have control over. I was not withholding it as ransom; in fact, I had been discussing back and forth that he would be getting it back. I was just getting situated with myself.

The Tenant said:

Everything she said justifies my whole argument. There was – her indication that I was totally aware is false. The other issue – she returned the pet deposit on time, so it's not an issue. So why was there an issue with the security deposit?

The Landlord said:

My testimony isn't that I made him aware of my medical emergency, but that in the Friday 18<sup>th</sup> text conversation, I said that he would be getting it no later than the 22<sup>nd</sup>. I was quite transparent with him. He did receive the money on the 22<sup>nd</sup>. In the spirit of – if communicating, and indicated extenuating circumstances – there are exceptions to that rule. I was not trying to keep deposit and there is no evidence that I was not planning on giving it back.

### Analysis

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

I find that the Tenant provided his forwarding address to the Landlord via text on August 30, 2020, and that the tenancy ended on August 31, 2020. Section 38(1) of the Act states the following about the connection of these two dates:

**38 (1)** Except as provided in subsection (3) or (4) (a), within 15 days after the later of

- (a) the date the tenancy ends, and
- (b) the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one of the following:

- (c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;

(d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

The Landlord was required to return the \$950.00 security deposit within fifteen days after August 31, 2020, namely by September 15, 2020, or to apply for dispute resolution to claim against the security deposit, pursuant to section 38(1). The Parties agree that the Landlord returned \$920.00 of the security deposit to the Tenant on September 22, 2020, and did not apply to the RTB to claim against the deposit. A landlord is required to return the whole security deposit, unless she has an Order of the Director authorizing her to keep some or all of it. There is no evidence before me that the Landlord had such an Order. Therefore, I find the Landlord failed to comply with her obligations under section 38(1).

Since the Landlord has failed to comply with the requirements of section 38(1), and pursuant to section 38(6)(b) of the Act, I find the Landlord must pay the Tenant double the amount of the security deposit. There is no interest payable on the security deposit.

I appreciate the Landlord's argument that she was not holding the security deposit for any malicious purpose, but because she was overwhelmed by the emergency situation involving her son. However, the Landlord did not cite any authority, which would allow me to consider such extenuating circumstances. Therefore, I must follow the provisions of the Act in making my order.

Double the \$950.00 security deposit is \$1,900.00, less the \$920.00 already paid is \$980.00. I award the Tenant with **\$980.00** from the Landlord pursuant to sections 38 and 67 of the Act. The Tenant is also awarded recovery of the \$100.00 Application filing fee from the Landlord, pursuant to section 72 of the Act. I grant the Tenant a Monetary Order of **\$1,080.00** from the Landlord pursuant to section 67 of the Act.

### Conclusion

The Tenant's claim for recovery of double the security deposit is successful in the amount of \$980.00. The Tenant is also awarded recovery of the \$100.00 filing fee for this Application from the Landlord.

I grant the Tenant a Monetary Order under section 67 of the Act from the Landlord in the amount of **\$1,080.00**.

This Order must be served on the Landlord by the Tenant and may be filed in the Provincial Court (Small Claims) and enforced as an Order of that Court.

This Decision is final and binding on the Parties, unless otherwise provided under the Act, and 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: February 11, 2021

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Residential Tenancy Branch