



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      **MNSDB-DR, FFT**

### Introduction

This hearing, redirected from an *ex parte* Direct Request proceeding dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- A return of all or a portion of the security and pet damage deposit for this tenancy pursuant to section 38; and
- Authorization to recover the filing fee from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

As both parties were present service was confirmed. The parties each testified that they received the respective materials and based on their testimonies I find each party duly served in accordance with sections 88 and 89 of the *Act*.

### Issue(s) to be Decided

Are the tenants entitled to a return of the security and pet damage deposit?

Are the tenants entitled to recover their filing fee from the landlord?

### Background and Evidence

The parties agree on the following facts. The monthly rent for this tenancy was \$2,450.00 payable on the first of each month. A security deposit of \$1,300.00 and pet damage deposit of \$500.00 were collected. The parties prepared a condition inspection report at both the start and end of the tenancy. The tenant authorized the deduction of \$130.00 from their deposit at the end of the tenancy. While the tenant signed the portion of the move-out condition inspection report indicating that they agree to a

deduction of \$1,300.00 from the security deposit and \$500.00 from the pet damage deposit both parties agree that there was no such agreement or understanding and that portion of the report was signed in error.

The tenant provided a forwarding address in writing by a letter dated October 5, 2020 which was posted on the rental unit door on that date. The landlord did not file an application for authorization to retain any portion of the deposits for this tenancy. The landlord returned the amount of \$538.71 to the tenants on October 21, 2020. The tenants now seek a return of the balance of the deposits for this tenancy of \$1,131.29.

The landlord submits that the rental unit required cleaning, maintenance and repairs and they have withheld the balance of the deposit for the cost to restore the rental unit to its pre-tenancy condition. The landlord submitted photographs, receipts and invoices in support of their position.

### Analysis

Section 19 of the *Act* provides that a landlord must not accept a security deposit greater than  $\frac{1}{2}$  of one month's rent and a deposit greater than that amount is considered an overpayment.

As the monthly rent for this tenancy was \$2,450.00 the maximum amount of the security deposit was \$1,225.00. Therefore, I find that of the \$1,300.00 paid there was an overpayment of \$75.00 which the tenant is entitled to have returned and issue a monetary award accordingly.

Section 38 of the *Act* requires the landlord to either return all of a tenant's security deposit or file for dispute resolution for authorization to retain a security deposit within 15 days of the end of a tenancy or a tenant's provision of a forwarding address in writing. If that does not occur, the landlord is required to pay a monetary award pursuant to section 38(6) of the *Act* equivalent to the value of the security deposit. However, this provision does not apply if the landlord has obtained the tenant's written authorization to retain all or a portion of the security deposit to offset damages or losses arising out of the tenancy.

I accept the evidence of the parties that the tenants have given written authorization that the landlord may retain \$130.00 of the security deposit for this tenancy. The landlord was therefore authorized to retain this amount. I further accept the evidence that the tenants did not authorize any further deductions from the deposits.

The parties testified that the tenants provided their forwarding address in writing on October 5, 2020 by a letter posted on the rental unit door on that date. In accordance with sections 88 and 90 of the *Act* the landlord is deemed to have received the tenants' forwarding address on October 8, 2020, three days after posting.

The landlord had 15 days from October 8, 2020 the date they are deemed to have received the tenants' forwarding address to either return the deposits in full or file an application for authorization to retain the deposits. The landlord did neither, providing a partial return of \$538.71 within the 15 day period on October 21, 2020 and unilaterally retaining the balance of \$1,056.29.

If the landlord had concerns arising from the condition of the rental unit, the landlord ought to have addressed those matters within 15 days of receiving a copy of the tenant's forwarding address by filing an application for authorization to retain an amount pursuant to the *Act*. Even if there was a legitimate arrear the landlord must receive written authorization from the tenant pursuant to the *Act* to apply the security deposit. The landlord cannot decide to simply keep the deposits as recourse for their loss without following the legislative steps

Based on the undisputed evidence before me, I find that the landlord has neither applied for dispute resolution nor returned the tenants' security deposit and pet damage deposit in full within the required 15 days. 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(6) of the *Act*, I find that the tenants are entitled to an \$2,112.58 Monetary Order, double the value of the security deposit and pet damage deposit retained without authorization by the landlord. No interest is payable over this period.

As the tenants were successful in their application, they may recover their filing fee from the landlord.

Conclusion

I issue a monetary order in the tenants' favour in the amount of \$2,287.58 on the following terms:

<b>Item</b>	<b>Amount</b>
Return of Overpaid Deposit	\$75.00
Double Security Deposit held without authorization (2 x \$556.29)	\$1,112.58
Double Pet Damage Deposit (2 x \$500)	\$1,000.00
Filing Fees	\$100.00
<b>TOTAL</b>	<b>\$2,287.58</b>

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: February 11, 2021

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Residential Tenancy Branch