



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Broadstreet Properties LTD  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNSD, MNDC, FF

### Introduction

This hearing was convened in response to applications by the landlord and the tenant.

The landlord's application is seeking orders as follows:

1. For a monetary order for damages to the rental unit;
2. To keep all or part of the security deposit; and
3. To recover the cost of filing the application.

The tenant's application is seeking orders as follows:

1. Return of the security deposit and pet damage deposit; and
2. To recover the cost of filing the application.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and make submissions at the hearing. Both confirmed under affirmation that they were not making an unauthorized recording of the hearing.

### Landlord's application

At the outset of the hearing the tenant indicated they were not served with the landlord's application for dispute resolution. The landlord's agent was unable to confirm service. As a result, I am not satisfied the tenant was served in accordance with the Act. Therefore, I dismiss the landlord's application with leave to reapply.

I also note in the landlord's monetary worksheet they had included an amount for unpaid rent. The landlord had already received a monetary order for the unpaid rent in a decision made on January 5, 2021. I will address this issue in the tenant's application and whether the landlord was required to apply to keep the security deposit and pet damage deposit.

### Tenant's application

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The tenant stated that the landlord did not arrange a move-out condition inspection report. Therefore, must return their security deposit and pet damage deposit.

The tenant provided a copy of a previous decision filed in evidence that was heard on January 4, 2021. On January 5, 2021, the landlord was granted an order of possession and a monetary order in the amount of \$5,822.00. The tenancy ended on January 11, 2021. The tenant confirmed they did not pay the monetary order of \$5,822.00 at the end of the tenancy and it remained unpaid. This was confirmed by the landlord.

Section 38 (3) of the Act states, a landlord may retain from a security deposit or a pet damage deposit an amount that

- (a) the director has previously ordered the tenant to pay to the landlord, and
- (b) at the end of the tenancy remains unpaid.

In this case, I find the issue of a move-out condition inspection report is not relevant because there was a previous decision ordering the tenant to pay the landlord the amount of \$5,822.00, that remained unpaid at the end of the tenancy.

The Arbitrator did not offset the amount ordered in the Decision on January 5, 2021, with the security deposit or pet damage deposit as the tenancy had not ended and the tenant could have paid the amount owed prior to their tenancy ending. Section 38(3) of the Act allows the landlord to retain from a security deposit or a pet damage deposit the amount paid to offset the previous order. The landlord is not required under section 38(1) of the Act to make an application claiming against the deposits, as it does not apply to section 38(3) of the Act.

Based on the above, I find the tenant is not entitled to the return of their security deposit or pet damage deposit as the landlord is entitled to retain these amounts to offset the previous order that remained unpaid at the end of the tenancy. Therefore, I dismiss the tenant's application without leave to reapply.

Conclusion

The landlord did not serve the tenant with their application. The landlord's application is dismissed with leave to reapply.

The tenant's application for return of the security deposit and pet damage deposit is dismissed without leave to reapply, as they were ordered to pay the landlord the amount of \$5,822.00, which remained unpaid at the end of the tenancy. The landlords are entitled to retain the security deposit and pet damage deposit to offset the amount owed by the tenant.

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: June 28, 2021

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Residential Tenancy Branch