



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNRL-S, FFL

### Introduction

This hearing dealt with the landlord's application, filed on March 10, 2021, pursuant to the *Residential Tenancy Act* ("Act") for:

- a monetary order for \$1,800.00 for unpaid rent, pursuant to section 67;
- authorization to retain the tenant's security and pet damage deposits, totalling \$1,800.00 (collectively "deposits"), pursuant to section 38; and
- authorization to recover the filing fee for this application, pursuant to section 72.

The applicant landlord did not attend this hearing, which lasted approximately 11 minutes. The respondent tenant attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

The hearing began at 1:30 p.m. and ended at 1:41 p.m. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I monitored the teleconference line throughout the hearing and confirmed from the teleconference system that the tenant and I were the only people who called into this teleconference.

At the outset of the hearing, I informed the tenant that Rule 6.11 of the Residential Tenancy Branch ("RTB") *Rules of Procedure* does not permit recording of a hearing by any party. The tenant affirmed, under oath, that she would not record this hearing.

During the hearing, I explained the hearing process to the tenant. The tenant had an opportunity to ask questions. The tenant stated that she was ready to proceed with the hearing. The tenant did not make any adjournment or accommodation requests.

The tenant confirmed receipt of the landlord's application for dispute resolution hearing package. In accordance with sections 89 and 90 of the *Act*, I find that the tenant was duly served with the landlord's application.

Preliminary Issue – Dismissal of Landlord's Application

Rule 7.3 of the RTB *Rules of Procedure* states:

*7.3 Consequences of not attending the hearing: If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply.*

In the absence of any appearance by the landlord, I order the landlord's entire application dismissed without leave to reapply.

Residential Tenancy Policy Guideline 17

Residential Tenancy Policy Guideline 17 states the following, in part (emphasis added):

*The arbitrator will order the return of a security deposit, or any balance remaining on the deposit, less any deductions permitted under the Act, on:*

- **a landlord's application to retain all or part of the security deposit;***
- or***

- a tenant's application for the return of the deposit.*

*unless the tenant's right to the return of the deposit has been extinguished under the Act. The **arbitrator will order the return of the deposit or balance of the deposit, as applicable, whether or not the tenant has applied for dispute resolution for its return.***

As per the above, I am required to deal with the tenant's deposits, even though she did not apply for their return, because the landlord has applied to retain them, as per Residential Tenancy Policy Guideline 17. The landlord did not appear at this hearing to support her application to retain the deposits and the landlord's application was dismissed without leave to reapply, as noted above.

Issue to be Decided

Is the tenant entitled to the return of her deposits?

### Background and Evidence

The tenant testified regarding the following facts. This tenancy began on April 1, 2019 and ended on March 1, 2021. Monthly rent of \$1,850.00 was payable on the first day of each month. A security deposit of \$900.00 and a pet damage deposit of \$900.00 were paid by the tenant and the landlord continues to retain both deposits. A move-in condition inspection report was completed for this tenancy. A move-out condition inspection report was not completed for this tenancy, although the tenant asked for one, but the landlord refused. The landlord did not provide the tenant with two opportunities to complete a move-out condition inspection, with one opportunity using the RTB-approved form. A written forwarding address was provided by the tenant to the landlord, by way of email, dated March 3, 2021. The landlord provided a copy of this email with her application evidence. The landlord did not have written permission to keep any part of the tenant's deposits.

### Analysis

Section 38 of the *Act* requires the landlord to either return the tenant's deposits or file for dispute resolution for authorization to retain the deposits, within 15 days after the later of the end of a tenancy and the 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)(b) of the *Act*, equivalent to double the value of the deposits. However, this provision does not apply if the landlord has obtained the tenant's written authorization to retain all or a portion of the deposits to offset damages or losses arising out of the tenancy (section 38(4)(a)) or an amount that the Director has previously ordered the tenant to pay to the landlord, which remains unpaid at the end of the tenancy (section 38(3)(b)).

I find that this tenancy ended on March 1, 2021. The landlords did not return the deposits to the tenant. The tenant provided a written forwarding address to the landlord on March 3, 2021 by email, which was received by the landlord. In accordance with section 88(j) of the *Act* and section 43(1) of the *Regulation*, email is a permitted form of service, effective on March 1, 2021. The landlord filed this application to retain the deposits on March 10, 2021. The tenant did not provide written permission for the landlord to retain any amounts from her deposits.

Although the landlord's right to claim against the deposits for damages was extinguished as per section 36 of the *Act*, for failure to complete a move-out condition inspection report, the landlord made a loss of rent claim, not a damages claim.

Over the period of this tenancy, no interest is payable on the tenant's deposits. I find that the tenant is not entitled to double the value of her security deposit, only the regular return of \$900.00. The landlord applied to retain the security deposit on March 10, 2021, which is within 15 days of the later forwarding address date of March 3, 2021.

A pet damage deposit can only be used for damage caused by a pet to the residential property. Section 38(7) of the *Act* states that unless the tenant agrees otherwise, the landlord is only entitled to use a pet damage deposit for pet damage. Hence, the landlord did not have written permission to retain the tenant's pet damage deposit, she did not file an application to retain the pet damage deposit for pet damage specifically, the landlord only applied to keep the pet damage deposit for rent, and she did not return this \$900.00 pet damage deposit to the tenant.

Therefore, I find that the tenant is entitled to recover double the value of her pet damage deposit of \$900.00, totalling \$1,800.00. Even though the tenant did not apply for double the return of her pet damage deposit, I am required to consider it, as the tenant did not waive her right to it at the hearing, as per Residential Tenancy Policy Guideline 17.

### Conclusion

The landlord's entire application is dismissed without leave to reapply.

I issue a monetary order in the tenants' favour in the amount of \$2,700.00 against the landlord. 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: August 06, 2021

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Residential Tenancy Branch