



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNSD MNDC FF

### Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution. A participatory hearing was held, via teleconference, on August 23, 2021. The Tenant applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- An order that the Landlord return all or part of the security deposit or pet damage deposit

The Tenant and the Landlord attended the hearing. All parties provided affirmed testimony and were provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. Both parties confirmed receipt of each other's evidence.

The Tenant filed an amendment on March 26, 2021, seeking to include a claim to recover the cost of sending her registered mail to the Landlord. However, she did a very poor job explaining how and when this was served to the Landlord. The Landlord denied getting the amendment. Regardless, I advised the Tenant that registered mailing costs are not recoverable under the Act, and as such, her amendment is not necessary. I decline to consider the amendment any further, as it has not been sufficiently demonstrated that it was served to the Landlord, and it is not something the Tenant is entitled to recover under the Act.

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

Issue(s) to be Decided

1. Is the Tenant entitled to an order that the Landlord return all or part of the security deposit or pet damage deposit?

Background and Evidence

The parties confirmed that the Tenant paid a security deposit of \$700.00 and a pet deposit of \$700.00. The Landlord still holds these amounts, in full. The parties agree that the Tenant was under a 6 month fixed term tenancy from April 1, 2020 till September 30, 2020.

The Tenant explained that she had a verbal conversation with the Landlord sometime in June about ending the tenancy early, and moving out at the end of July. The Tenant stated that she gave her written notice, along with her forwarding address in writing on June 29, 2020, but the Tenant did not provide a copy of this letter. The Landlord stated it did not contain her forwarding address.

The Tenant stated that on July 31, 2020, on the last day of her tenancy, she did the move out inspection with the Landlord, and at that time she provided the Landlord with another letter with her forwarding address on it. The Landlord acknowledged getting this letter, and stated he did not return the deposits because the Tenant signed an addendum to her lease specifying that the Landlord is entitled to the Tenant's damage deposit if the Tenant ends the fixed term lease early. The Tenant stated she had a disagreement with the Landlord about paying this amount at the end of the tenancy.

The Landlord stated that the Tenant agreed, verbally, on July 18, 2020, that the Landlord could keep half the deposit if the Landlord was able to re-rent the unit by August 15, 2020, or he could keep the full deposit if he was unable to re-rent the unit for August. The Landlord provided a witness statement speaking to this conversation. However, it does not appear any agreement was reached, in writing, about how to handle the deposits, or any deductions.

Analysis

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

Section 38(1) of the *Act* requires a landlord to repay the security deposit or make an application for dispute resolution within 15 days after receipt of a tenant's forwarding address in writing or the end of the tenancy, whichever is later. When a landlord fails to do one of these two things, section 38(6) of the *Act* confirms the tenant is entitled to the return of double the security deposit.

In this case, I find there is insufficient evidence that the Tenant served the Landlord with her forwarding address in writing for the return of her deposits on June 29, 2020. No copy of this letter was provided, and the Landlord said it was only the Tenant's Notice to End Tenancy. The Landlord acknowledged receiving the Tenant's forwarding address in writing on July 31, 2020, which is the date the tenant moved out, and the date of the move-out inspection. I find the Landlord received the Tenant's forwarding address on July 31, 2020.

Although there is a term in the addendum about the Tenant forfeiting her deposit if she breached the fixed term tenancy agreement, I note the parties had discussions, verbally, and some disagreement about what amounts could be deducted or withheld. There is no evidence that the parties ever came to an agreement in writing, at the end of the tenancy with respect to any deductions from the deposit. The Landlord may only retain the deposit, if there is a clear written agreement, pursuant to section 38(4)(a) made at the end of the tenancy. It appears there was some discussion, and some disagreement about the amounts and deductions. However, in the absence of a written agreement at the end of the tenancy, the Landlord was required to either return the deposits, in full, or file an application against the deposits. The Landlord did neither. If the Landlord wanted compensation for breach of a fixed term tenancy agreement, he should have filed an application against the deposits, within 15 days.

Pursuant to section 38(1) of the *Act*, the Landlord had 15 days from receipt of the forwarding address in writing (until August 15, 2020) to either repay the security deposit (in full) to the Tenant or make a claim against it by filing an application for dispute resolution. The Landlord did neither and I find the Landlord breached section 38(1) of the *Act*.

Accordingly, as per section 38(6)(b) of the *Act*, I find the Tenant is entitled to recover double the amount of the security and pet deposit (\$1,400.00 x 2). Further, section 72 of the *Act* gives me authority to order the repayment of a fee for an application for dispute

resolution. Since the Tenant was successful in this hearing, I also order the Landlord to repay the \$100.00 fee the Tenant paid to make the application for dispute resolution.

In summary, I issued the Tenant a monetary order for \$2,900.00 based on the Landlord's failure to deal with the security deposit in accordance with section 38 of the *Act*.

### Conclusion

I grant the Tenants a monetary order in the amount of **\$2,900.00**. This order must be served on the Landlord. If the Landlord fails to comply with this order the Tenant may file the order in the Provincial Court (Small Claims) and be 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 23, 2021

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Residential Tenancy Branch