



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding DEVON PROPERTIES LTD.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNSDB-DR, FFT

### Introduction

On October 28, 2021, the Tenant applied for a Direct Request proceeding seeking a Monetary Order for a return of the double the balance of the security deposit and pet damage deposit pursuant to Section 38 of the *Residential Tenancy Act* (the “*Act*”) and seeking recovery of the filing fee pursuant to Section 72 of the *Act*.

On December 9, 2021, this Application was set down for a Dispute Resolution proceeding on July 12, 2022 at 1:30 PM.

The Tenant attended the hearing. T.J. attended the hearing as an agent for the Landlord. At the outset of the hearing, I explained to the parties that as the hearing was a teleconference, none of the parties could see each other, so to ensure an efficient, respectful hearing, this would rely on each party taking a turn to have their say. As such, when one party is talking, I asked that the other party not interrupt or respond unless prompted by myself. Furthermore, if a party had an issue with what had been said, they were advised to make a note of it and when it was their turn, they would have an opportunity to address these concerns. The parties were also informed that recording of the hearing was prohibited and they were reminded to refrain from doing so. As well, all parties in attendance provided a solemn affirmation.

The Tenant advised that the Notice of Hearing and evidence package was served to the Landlord by registered mail on December 10, 2021, and T.J. confirmed receipt of this package. Based on this undisputed evidence, and in accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Landlord was duly served the Notice of Hearing and evidence package. As such, I have accepted this evidence and will consider it when rendering this Decision.

T.J. advised that the Landlord's evidence was served to the Tenant by email on July 2, 2022, and by registered mail on July 3, 2022. The Tenant confirmed that she received the July 2, 2022 email that day, and she did not have any position with respect to the manner with which it was served. She also acknowledged receiving an identical package of evidence by registered mail. As the Tenant confirmed receiving the Landlord's evidence by email on July 2, 2022, as she had no opposition with respect to how it was served, and as this was served in accordance with the timeframe requirements of Rule 3.15 of the Rules of Procedure, I have accepted this evidence and will consider it when rendering this Decision.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

#### Issue(s) to be Decided

- Is the Tenant entitled to a return of double the balance of the security deposit and pet damage deposit?
- Is the Tenant entitled to recover the filing fee?

#### Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

All parties agreed that the tenancy started on May 15, 2021 as a fixed term tenancy ending on May 31, 2022. However, the tenancy ended when the Tenant gave up vacant possession of the rental unit on September 15, 2021. Rent was established at \$1,565.00 per month and was due on the first day of each month. A security deposit of \$782.50 and a pet damage deposit of \$782.50 were also paid. A copy of the signed tenancy agreement was submitted as documentary evidence.

All parties also agreed that the Tenant provided her forwarding address in writing on an

Information Sheet signed on or around August 10, 2021, and again on the move-out inspection report of September 15, 2021.

T.J. advised that the Tenant provided written authorization to retain \$1,000.00 of the deposits on the move-out inspection report. In addition, he stated that the Landlord then sent the Tenant a cheque in the remaining balance of \$565.00 prior to October 1, 2021. He referenced the documentary evidence submitted to demonstrate that this cheque was cashed on October 1, 2021.

The Tenant confirmed that she permitted the Landlord to retain \$1,000.00 of the deposits on the move-out inspection report and that the balance of \$565.00 was returned to her. While she claimed that the letter containing this cheque was post marked for October 1, 2021, she did not provide any documentary evidence to support this.

### Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this decision are below.

Section 38(1) of the *Act* requires the Landlord, within 15 days of the end of the tenancy or the date on which the Landlord receives the Tenant's forwarding address in writing, to either return the deposits in full or file an Application for Dispute Resolution seeking an Order allowing the Landlord to retain the deposits. If the Landlord fails to comply with Section 38(1), then the Landlord may not make a claim against the deposits, and the Landlord must pay double the deposits to the Tenant, pursuant to Section 38(6) of the *Act*.

When reviewing the evidence before me, the undisputed evidence is that the Tenant provided a forwarding address in writing on or around August 10, 2021, and again on the move-out inspection report of September 15, 2021, and that the Tenant gave up vacant possession of the rental unit on September 15, 2021. I find it important to note that Section 38 of the *Act* clearly outlines that from the later point of a forwarding address in writing being provided or from when the tenancy ends, the Landlord must either return the deposit in full **or** make an application to claim against the deposits.

There is no provision in the *Act* which allows the Landlord to retain the deposits without the Tenant's written consent.

The undisputed evidence is that the Tenant provided written authorization for the Landlord to keep \$1,000.00 of the deposits. Moreover, while the Tenant alleges that the remainder of the deposits were mailed out on October 1, 2021, she has not provided any documentary evidence of this. Furthermore, the Landlord has provided documentary evidence, and T.J. provided solemnly affirmed testimony, that the remainder of the deposits of \$565.00 was returned to the Tenant and cashed on October 1, 2021. As this remaining balance appears to have been sent to the Tenant within 15 days of September 15, 2021, I find that the Landlord complied with the requirements of Section 38 of the *Act*. As such, I dismiss the Tenant's Application in its entirety.

As the Tenant was not successful in this Application, I find that the Tenant is not entitled to recover the \$100.00 filing fee paid for this Application.

### Conclusion

The Tenant's Application is dismissed without leave to reapply.

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: July 13, 2022

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Residential Tenancy Branch