



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

A matter regarding Associated Property Management  
Ltd. and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNSDB-DR, FFT

### Introduction

On July 20, 2022, an adjudicator appointed pursuant to the *Residential Tenancy Act* (the “Act”) adjourned the Tenants’ application for dispute resolution to a participatory hearing. She did so on the basis of an *ex parte* hearing using the Residential Tenancy Branch’s direct request process. The adjudicator adjourned the direct request for the following reasons:

*I have reviewed all documentary evidence and I find that the rental address on the residential tenancy agreement submitted by the tenant does not include the street designation “S” that appears on the Application for Dispute Resolution.*

*I also note that the landlord’s name on the tenancy agreement includes a designation “(2001)” that does not appear on the application.*

*Furthermore, I note that the tenancy agreement indicates the tenant paid a security deposit of \$575.00 and a pet damage deposit of \$575.00. However, on the Tenant’s Direct Request Worksheet, the tenant has indicated they paid a security deposit of \$775.00 and a pet damage deposit of \$775.00. I also find that the deposit letter submitted requests repayment of the deposits in two different amounts: \$1,500.00 and \$1,550.00.*

*I find these discrepancies raise questions that can only be addressed in a participatory hearing.*

This hearing dealt with the Tenant’s application under the Act for:

- return of the security deposit and pet damage deposit in the amount of \$1,550.00 pursuant to section 38.1; and

- authorization to recover the filing fee from the Landlord pursuant to section 72.

The Tenant attended this hearing and gave affirmed testimony.

No one attended on behalf of the Landlord for this teleconference hearing, which started at 1:30 pm and concluded at 2:04 pm. I confirmed that the correct call-in numbers and participant access code had been provided in the notice of dispute resolution proceeding. I used the teleconference system to confirm that the Tenant and I were the only ones who had called into the hearing.

#### Preliminary Matter – Service of Dispute Resolution Documents

The Tenant confirmed that the notice of dispute resolution proceeding package (the “NDRP Package”) was sent to the Landlord via registered mail on June 28, 2022 (tracking number referenced on the cover page of this decision). The Tenant confirmed that her documentary evidence was included in the direct request package sent to the Landlord via registered mail on June 3, 2022. Based on the foregoing, I find the Landlord was served with the NDRP Package in accordance with section 89(1)(c) of the Act. Pursuant to section 90(a) of the Act, I find the Landlord is deemed to have received the NDRP Package on July 3, 2022, or on the fifth day after mailing.

Having found the Landlord to be deemed served with notice of this hearing, I directed the hearing to continue.

#### Preliminary Matter – Adjudicator’s Concerns

The Tenant explained that she had looked up the Landlord’s name online.

The Tenant stated that the discrepancy in the rental unit address was likely due to an oversight by the Landlord when preparing the tenancy agreement. The Tenant confirmed that there is an “S” designation in the rental unit address.

The Tenant stated that the security deposit and pet damage deposit of \$575.00 each was also an oversight. The Tenant confirmed that rent was \$1,550.00 per month and she had paid half of the rent, or \$775.00, for each of the security deposit and damage deposit. The Tenant referred to a ledger which shows the deposits paid.

### Issues to be Decided

1. Is the Tenant entitled to return of the security deposit and pet damage deposit?
2. Is the Tenant entitled to reimbursement of the filing fee?

### Background and Evidence

While I have turned my mind to all the accepted documentary evidence and the testimony presented, only the details of the respective submissions and arguments relevant to the issues and findings in this matter are reproduced here. The principal aspects of this application and my findings are set out below.

According to the Tenant's application, this tenancy commenced on October 23, 2018 and ended on March 23, 2021. The Tenant stated that she paid a security deposit and pet damage deposit of \$775.00 each. The Tenant stated that the other tenant on the tenancy agreement is her fiancé.

The Tenant submitted a condition inspection report which indicates that there was a move-in inspection on October 19, 2018 and a move-out inspection on March 29, 2021. The condition inspection report did not include a complete forwarding address.

The Tenant submitted a draft forwarding letter to the Landlord requesting a return of the security and pet damage deposit totaling \$1,550.00. The Tenant's application indicates that a copy of this letter was given to the Landlord on February 28, 2022. According to the Tenant, she gave a finalized version of this letter to the Landlord's receptionist at the Landlord's office. The Tenant stated that her fiancé had driven her to the Landlord's office to drop off this letter. The Tenant acknowledged that there was a typo on the draft letter and the amount requested was \$1,550.00 instead of \$1,500.00.

The Tenant confirmed that she did not receive any response or return of the deposits from the Landlord.

### Analysis

- 1. Is the Tenant entitled to return of the security deposit and pet damage deposit?*

Section 38(1) of the Act states:

**Return of security deposit and pet damage deposit**

38(1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of

- (a) the date the tenancy ends, and
- (b) the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one of the following:

- (c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;
- (d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

I accept the Tenant's undisputed evidence that the tenancy ended on March 23, 2021. I further accept the Tenant's undisputed evidence that she gave a finalized copy of her forwarding address letter to the Landlord's receptionist at the Landlord's office on February 28, 2022. I find the Landlord was served with the Tenant's forwarding address letter on February 28, 2022 in accordance with section 88(b) of the Act.

Pursuant to section 38(1) of the Act, I find the Landlord had until March 15, 2022, or fifteen days after receiving the Tenant's forwarding address in writing, to return the deposits to the Tenant or make an application for dispute resolution to claim against the deposits. I find the Landlord did not return the deposits and did not make an application for dispute resolution.

Section 38(6) of the Act states that if a landlord does not comply with section 38(1) of the Act, the landlord may not make a claim against the security or pet damage deposit and must pay the tenant double the amount of the deposits.

According to Residential Tenancy Policy Guideline 17. Security Deposit and Set Off ("Policy Guideline 17"), the arbitrator will order a return of a security deposit unless the tenant's right to the return of the security deposit has been extinguished under the Act. I find the parties attended move-in and move-out inspections and the Tenant was provided with a copy of the condition inspection report. I find the Tenant's forwarding address was given to the Landlord in writing within one year after the tenancy ended. Therefore, I find the Tenant's right to the return of the security deposit was not extinguished under any of sections 24(1), 36(1), or 38(9) of the Act.

Policy Guideline 17 further states that unless the tenant has specifically waived the doubling of the deposit, either on an application for the return of the deposit or at the hearing, the arbitrator will order the return of double the deposit. I find the Tenant did not specifically waive the doubling provisions of the Act.

I conclude that the Tenant is entitled to a return of double the security deposit and pet damage deposit with interest under sections 38(1) and 38(6) of the Act.

The interest rate on deposits from 2018 to 2022 has been 0% per annum, and 1.95% per annum in 2023. According to Policy Guideline 17, interest is calculated on the original security amount, before any deductions are made, and is not doubled. Therefore, using the Residential Tenancy Branch Deposit Interest Calculator online tool, I find the Tenant is entitled to \$7.12 of interest on the security deposit from the start of the tenancy to the date of this decision, calculated as follows:

2018 \$1550.00: \$0.00 interest owing (0% rate for 24.11% of year)  
 2019 \$1550.00: \$0.00 interest owing (0% rate for 100.00% of year)  
 2020 \$1550.00: \$0.00 interest owing (0% rate for 100.00% of year)  
 2021 \$1550.00: \$0.00 interest owing (0% rate for 100.00% of year)  
 2022 \$1550.00: \$0.00 interest owing (0% rate for 100.00% of year)  
 2023 \$1550.00: \$7.12 interest owing (1.95% rate for 23.56% of year)

Pursuant to sections 38 and 38.1 of the Act, I order the Landlord to pay the Tenant \$3,107.12 for the return of double the security and pet damage deposits plus interest.

## *2. Is the Tenant entitled to reimbursement of the filing fee?*

The Tenant has been successful in this application. I grant the Tenant reimbursement of the filing fee under section 72(1) of the Act.

The total Monetary Order granted to the Tenant is calculated as follows:

Item	Amount
Return of Double the Security and Pet Damage Deposit (\$775.00 + \$775.00) x2	\$3,100.00
Interest on Security Deposit	\$7.12
Filing Fee	\$100.00
<b>Total Monetary Order for Tenant</b>	<b>\$3,207.12</b>

Conclusion

The Tenant's claims for return of the security and pet damage deposits and reimbursement of the filing fee are successful.

Pursuant to sections 38, 38.1, and 72 of the Act, I grant the Tenant a Monetary Order in the amount of **\$3,207.12**. This Order may be served on the Landlord, 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: March 27, 2023

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Residential Tenancy Branch