



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MND MNSD FF

### Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the "Act") for:

Landlord:

- a monetary order for damages pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38;
- authorization to recover the filing fee for this application pursuant to section 72.

The landlord did not attend this hearing, although I waited until 1:45 p.m. in order to enable the landlord to connect with this teleconference hearing scheduled for 1:30 p.m. The landlord should have been aware of the hearing date, time and call in instructions as this dispute was initiated by the landlord and the landlord served a copy of the notice of hearing on the respondent.

The tenant attended the hearing and was given a full opportunity to provide affirmed testimony, to present evidence and to make submissions in this hearing which proceeded in the absence of the landlord.

### Issues

Is the landlord entitled to a monetary order for damages?

Is the landlord entitled to retain all or a portion of the security deposit?

Is the landlord entitled to recover the filing fee for this application?

Is the tenant entitled to a return of all or a portion of the security deposit, including double the amount?

### Background and Evidence

The tenancy began on February 15, 2022 and ended on April 28, 2022. The tenant paid a security deposit of \$950.00 and a pet deposit of \$950.00 at the start of the tenancy. The landlord returned the full \$950.00 security deposit and \$550.00 of the pet deposit but retained \$400.00 alleging damages to a TV caused by the tenant's cat.

The tenant provided a forwarding address to the landlord by way of a letter dated June 6, 2022. The landlord filed this application to retain the pet deposit on June 20, 2022 within the time period permitted under the Act.

The move-in and move-out inspection reports submitted by the landlord are incomplete as they are missing the first and last page which contains the parties signatures and dates of completion etc. In the application, the landlord states the inspection reports are incomplete due to the tenant not returning the completed forms.

### Analysis

Section 38 of the Act provides that when a tenancy ends, the landlord may only keep a security deposit if the tenant has, at the end of the tenancy, consented in writing, or the landlord has an order for payment which has not been paid. Otherwise, the landlord must return the deposit, with interest if payable, or make a claim in the form of an Application for Dispute Resolution. Those steps must be taken within fifteen days of the end of the tenancy, or the date the tenant provides a forwarding address in writing, whichever is later. A landlord who does not comply with this provision may not make a claim against the deposit and must pay the tenants double the amount of the security deposit, pet deposit, or both, as applicable.

Pursuant to section 35 of the Act, the landlord and tenant must together inspect the condition of the rental unit at the end of the tenancy and the landlord must offer the tenant at least 2 opportunities, as prescribed in the Regulation, for the inspection. The landlord must complete a condition inspection report in accordance with the regulations and both the landlord and tenant must sign the condition inspection report and the landlord must give the tenant a copy of that report in accordance with the regulations. The landlord may make the inspection and complete and sign the report without the tenant if the landlord has provided 2 opportunities, as prescribed, and the tenant does not participate on either occasion, or the tenant has abandoned the rental unit.

Pursuant to section 36 of the Act, unless a tenant has abandoned the rental unit, the right of the landlord to claim against a security deposit or a pet damage deposit, or both,

for damage to residential property is extinguished if the landlord does not offer two opportunities for an inspection as per section 35 or having made an inspection with the tenant, does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.

Although the landlord made an application to retain the deposit, the landlord failed to follow through on that application by attending the hearing and presenting evidence in support of the application. As such, the landlord's application is dismissed in its entirety without leave to reapply.

Additionally, I find the landlord's right to claim against the deposit for damages was extinguished as the landlord failed to complete the move-in and move-out inspection reports and provided a completed copy to the tenant. The onus is on the landlord to complete these forms and provide a copy to the tenant not the other way around as suggested in the landlord's application. Therefore, the tenant's deposits should have been returned in full within 15 days of the forwarding address being provided. I also note that the condition inspection reports made no mention of the TV or other furnishings provided in the unit.

The tenant's security deposit was not refunded within 15 days as required by section 38 of the Act; therefore, the doubling provisions of section 38 apply.

The tenant is awarded an amount of **\$1350.00**, which is double the original pet deposit less the amount already returned to the tenant [  $(\$950.00 \times 2) - 550.00$  ].

### Conclusion

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

Pursuant to section 38 of the *Act*, I grant the tenant a Monetary Order in the amount of \$1350.00. 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: March 14, 2023

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Residential Tenancy Branch