



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Ministry of Housing

## DECISION

Dispute Codes      MNSDS-DR, FFT

### Introduction

The Tenant filed an Application for Dispute Resolution on November 22, 2022 seeking an Order granting a refund of the security deposit and pet damage deposit from their prior tenancy. They also seek recovery of the Application filing fee.

This participatory hearing was scheduled after an agent in this office determined that correct information regarding the tenancy was not in place to proceed by a direct request proceeding. The agent informed the Tenant of this on March 15, 2023. This generated a Notice of Dispute Resolution sent to the Tenant.

The Tenant forwarded this information to the Landlord via registered mail on March 16, 2023. The Landlord in the hearing verified they received this information via registered mail. I find the Tenant sent their prepared evidence in advance to the Landlord as required.

The matter proceeded by way of a hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the *Act*) on July 7, 2023. In the conference call hearing I explained the process and provided the parties (*i.e.*, the Landlord and the Tenant) the opportunity to ask questions about the hearing process.

### Issue(s) to be Decided

Is the Tenant entitled to the return of the security deposit and/or the pet damage deposit, as per s. 38 of the *Act*?

Is the Tenant entitled to recover the filing fee for this Application, pursuant to s. 72 of the *Act*?

### Background and Evidence

The Tenant and the Landlord spoke to the terms of the tenancy agreement, which was not documented. The tenancy started on April 22, 2021. The Landlord increased the rent over the course of the tenancy from \$925, with the final amount of \$928.87.

At the start of the tenancy, the Tenant paid a security deposit of \$462.50, and a pet damage deposit of \$462.50. The Landlord confirmed these two amounts.

The Tenant noted that the tenancy started with “short notice”, and they did not have the opportunity to inspect the condition of the rental unit together with the Landlord at the start of the tenancy.

The tenancy ended when the Tenant advised the Landlord of their desire to end the tenancy. The Tenant provided that they used email for this purpose and attached a written letter providing their new address to the Landlord. On a follow-up call to the Landlord, the Landlord stated this was fine, as confirmed by the Landlord in the hearing.

The Tenant noted they required an extra day at the end of the tenancy, then moving out finally on November 1, 2022. The Landlord confirmed this, then provided that the Tenant returned the key in the mailbox, where the Landlord found that key only after 5 or 6 days.

The Landlord, upon finding the key at the rental unit, opened the door and discovered a cabinet door damaged, and damage in the bedroom from the Tenant’s pet. The Tenant maintained this damage observed by the Landlord was already in place, prior to the tenancy.

The Tenant’s evidence shows they provided their forwarding address to the Landlord on September 28, 2022, and again on November 16, 2023. They messaged to the Landlord on November 15 for a return of the deposits, to which, according to the Tenant, the Landlord stated they would return deposits to the Tenant’s new address.

The Tenant stated in the hearing they did not receive any amount of the deposits returned to them.

In the hearing, the Landlord maintained they informed the Tenant about damage in the rental unit; however, the Tenant disagreed with what the Landlord claimed. The Landlord stated they could not re-rent the unit to a new tenant, without the key in hand until approximately November 5<sup>th</sup> or 6<sup>th</sup>. The Landlord proposed deducting some amount for this to the Tenant, and the Tenant disagreed. Though the Landlord had

some design for selling the rental unit, they stated this was not possible with damage as they found and attributed to the Tenant.

### Analysis

The *Act* s. 38(1) states that within 15 days after the later of the date the tenancy ends, or the date a landlord receives a tenant's forwarding address in writing, a landlord must repay any security or pet damage deposit to a tenant, or make an Application for Dispute Resolution for a claim against any deposit.

Further, s. 38(6) of the *Act* provides that if a landlord does not comply with subsection (1), a landlord must pay a tenant double the amount of the security and/or pet damage deposit.

From the evidence I find as fact that the Tenant provided their forwarding address to the Landlord on September 28, 2022. This was well in advance of the end-of-tenancy date of October 31, 2022, or alternately November 1, 2022.

The Landlord informed the Tenant of damage, as well as not having the key returned, and proposed keeping some amount from the deposits. The Tenant disagreed with this, and the Tenant made their Application to the Residential Tenancy Branch on November 22, 2022.

I find the tenancy ended on November 1, 2022. This is when they vacated the rental unit. Regarding s. 38(1), this is the later catalyst, being "the date the tenancy ends". The Landlord had fifteen days from November 1, 2022 to make a claim against the deposits. Even if the Landlord understood the tenancy ended later, such as November 5 or 6 (the date was not definitely stated by the Landlord in the hearing), they still did not make a claim against the deposits via the Residential Tenancy Branch as is legally required. The requirement for this is clear in the *Act*.

I find the Landlord did not make an application to claim against the deposits. Therefore, the Landlord retaining the security deposit and/or pet damage deposit is not in line with the provisions of the *Act*. The Landlord was bound by the provisions of s. 38(1).

I find as fact that the tenancy ended, and the Landlord did not make a claim to retain any part of the deposits within the timeframe of 15 days. In sum, I find the Landlord retained the deposits after the tenancy ended. The Landlord had the opportunity to register a claim to retain some part of the deposit; however, they did not.

I find the Landlords did not return the deposits to the Tenant as required by the *Act*. This constitutes a breach of s. 38(1); therefore, s. 38(6) applies and the Landlord must pay double the amount of the security deposit, and double the amount of the pet damage deposit. This total is \$1,850.

As the Tenant was successful in this application, I find the Tenant is entitled to recover the \$100.00 filing fee they paid for this application.

### Conclusion

I order the Landlord to pay the Tenant the amount of \$1,950. I grant the Tenant a Monetary Order for this amount. The Tenant may file this Monetary Order in the Provincial Court (Small Claims), where it will 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 s. 9.1(1) of the *Act*.

Dated: July 8, 2023

---

Residential Tenancy Branch