



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

A matter regarding SHAPE PROPERTIES CORP. and  
[tenant name suppressed to protect privacy]

## **DECISION**

### **Introduction**

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This hearing dealt with cross Applications for Dispute Resolution filed by the parties under the *Residential Tenancy Act* (the “Act”). The matter was set for a conference call.

The Landlord’s Application for Dispute Resolution was made on July 10, 2023. The Landlord applied for a monetary order for losses due to the tenancy, permission to retain the security deposit and to recover their filing fee.

The Tenant’s Application for Dispute Resolution was made on July 19, 2023. The Tenant applied for the return of double the amount of their security and pet damage deposits and the return of their filing fee.

The Tenants and an agent for the Landlord (the “Landlord”) attended the hearing and were each affirmed to be truthful in their testimony. The Tenants and the Landlord were provided with the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### **Service of Evidence**

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- Based on the submissions before me, I find that the Landlord's evidence was not served to the Tenant in accordance with section 88 of the Act.
- Based on the submissions before me, I find that the Tenants’ evidence was served to the Tenants in accordance with section 88 of the Act.

## Issues to be Decided

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- Is the Landlord entitled to monetary compensation for damages under the *Act*?
- Is the Landlord entitled to retain the security and pet damage deposits?
- Are the Tenants entitled to the return of their security deposit?
- Is the Landlord entitled to recover the cost of the filing fee?
- Are the Tenants entitled to recover the cost of the filing fee?

## Background and Evidence

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While I have considered all of the accepted documentary evidence and the testimony of the parties, only the details of the respective submissions and/or arguments relevant to the issues and findings in this matter are reproduced here.

Both parties agreed that the tenancy began on October 1, 2022, that rent in the amount of \$2,745.00 was payable on the first day of the month, and that the Tenants had paid a security deposit of \$1,372.50 and a pet damage deposit of \$1,372.50 at the outset of this tenancy. The Landlord submitted a copy of the tenancy agreement into documentary evidence.

Both parties agreed that the move-in and move-out inspection had been completed for this tenancy.

The Landlord submitted that they are holding both the security and pet damage deposits (the “deposits”) for this tenancy pending the results of these proceedings. The Landlord was asked to speak to why they would withhold \$2,745.00 in deposits when they were only claiming for \$700.00. The Landlord responded that it is company policy.

The Landlord submitted that they are claiming for \$600.00 in the recovery of their cost to have the rental unit painted at the end of this tenancy. The Landlord submitted that there was refresh painting required due to the Tenants’ use of the rental unit.

The Tenants submitted that they returned the rental unit to the Landlord clean, with only normal wear and tear and that they should not be responsible for refreshing the painting in the rental unit. The Tenants submitted three videos of the move-out inspection into documentary evidence.

The Tenants submitted that they are entitled to double the amount of their deposits back as the Landlord's claim was unfounded and the amount, they are claiming is smaller than the amounts of the deposits they continue to hold.

The Landlord was asked to speak about the pet damage they were claiming in their application. The Landlord agreed that the pet damage was not specifically noted on their application, or mentioned in regard to their painting claim, but that there was a pet in the rental unit and that obviously the pet would have caused some of the requirement to paint.

## **Analysis**

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Based on the testimony, the documentary evidence before me, and on a balance of probabilities, I find as follows:

**Is the Landlord entitled to monetary compensation for damages under the Act?**  
**Is the Landlord entitled to retain the security and pet damage deposits?**

The Landlord has claimed for a monetary order for damages, consisting of \$600.00 for painting the rental unit. Awards for compensation due to damage are provided for under sections 7 and 67 of the Act. A party that makes an application for monetary compensation against another party has the burden to prove their claim. The Residential Tenancy Policy Guideline #16 Compensation for Damage or Loss provides guidance on how an applicant must prove their claim. The policy guide states the following:

“The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. To determine whether compensation is due, the arbitrator may determine whether:

- A party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
- Loss or damage has resulted from this non-compliance;
- The party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
- The party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

As stated above, a party making a monetary claim must provide sufficient evidence to show that the parties they are claiming against failed to comply with the Act, regulation or tenancy agreement. In this case, the Landlord is claiming for painting costs at the end of this tenancy. Section 37(2) of the Act states the following regarding a tenant's responsibility for the condition of the rental unit at the end of a tenancy:

***Leaving the rental unit at the end of a tenancy***

*37 (2) When a tenant vacates a rental unit, the tenant must*

*(a) leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear, and*

*(b) give the landlord all the keys or other means of access that are in the possession or control of the tenant and that allow access to and within the residential property.*

Additionally, the Residential Tenancy Policy Guideline #1 Landlord & Tenant – Responsibility for Rental Premises goes on to state the following:

1. "... The tenant must maintain "reasonable health, cleanliness and sanitary standards" throughout the rental unit or site, and property or park. The tenant is generally responsible for paying cleaning costs where the property is left at the end of the tenancy in a condition that does not comply with that standard. The tenant is also generally required to pay for repairs where damages are caused, either deliberately or as a result of neglect, by the tenant or his or her guest. **The tenant is not responsible for reasonable wear and tear to the rental unit or site (the premises), or for cleaning to bring the premises to a higher standard than that set out in the Residential Tenancy Act or Manufactured Home Park Tenancy Act (the Legislation).**"

I find that pursuant to section 37(2) of the Act and Residential Tenancy Policy Guideline #1 a landlord may not pass on the cost of refresh painting of a rental unit at the end of a tenancy, as the Act only requires a rental unit to be returned reasonably clean and undamaged.

I have carefully reviewed the Landlord's submission to these proceedings, and I find that the Landlord has failed to provide any evidence to show that these Tenants had returned the rental unit in a damaged or unclean state. Consequently, I dismiss the Landlord's claim for \$600.00 in compensation for painting the rental unit at the end of this tenancy, in its entirety.

As the Landlord has failed in their application, I find that the Landlord is not entitled to retain any portion of the deposits, they are holding for this tenancy.

### **Are the Tenants entitled to the return of their deposits?**

As for the Tenant's claim for the return of the doubled value of the security and pet damage deposits (the "deposits") for this tenancy. Section 38 of the *Act* sets the requirements on how deposits are handled at the end of a tenancy, stating the following:

#### ***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.*

*(2) Subsection (1) does not apply if the tenant's right to the return of a security deposit or a pet damage deposit has been extinguished under section 24 (1) [tenant fails to participate in start of tenancy inspection] or 36 (1) [tenant fails to participate in end of tenancy inspection].*

*(3) A landlord may retain from a security deposit or a pet damage deposit an amount that*

- (a) the director has previously ordered the tenant to pay to the landlord, and*
- (b) at the end of the tenancy remains unpaid.*

*(4) A landlord may retain an amount from a security deposit or a pet damage deposit if,*

- (a) at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant,*
- or*
- (b) after the end of the tenancy, the director orders that the landlord may retain the amount.*

As the Landlord has failed in their claim against the deposits, for this tenancy, I find that the Tenants are entitled to the return of their full deposits for this tenancy, plus any interest due under the Act.

Furthermore, I have reviewed the Landlord's application for these proceedings, and I noted that the Landlord had not outlined any specific claim for pet damage to the rental unit in their application; however, the Landlord has withheld the pet damage deposits for this tenancy pending the results of these proceedings. Section 38(7) of the Act states the following:

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

(7) If a landlord is entitled to retain an amount under subsection (3) or (4), a pet damage deposit may be used **only for damage caused by a pet** to the residential property, unless the tenant agrees otherwise.”

I have also reviewed all of the verbal submissions, made by the Agent for the Landlord, during these proceedings, and I find that the Landlord did not make any submission regarding a claim for pet damage to the rental unit during the presentation of their case. However, as of the date of these proceedings, the Landlord has continued to retain the pet damage deposit for this tenancy.

I accept the agreed-upon testimony of these parties, and I find that this tenancy ended on June 30, 2023. In addition, I also accept the agreed-upon testimony of these parties that the Tenants provided their forwarding address to the Landlord on June 30, 2023, by writing it in the move-out inspection form. The dates provided would have allowed the Landlords until July 15, 2023, to comply with section 38(1) and either file their claim against the pet damage deposit or return it in full to the Tenants.

As the Landlord did not declare that they were making a claim against the pet damage in their application, I find that the Landlord was required to return the pet damage deposit, in full, to these Tenants in accordance with the Act. Which, in this case, they did not do, instead choosing to hold the pet damage deposit pending the results of these proceedings.

Section 38(6) of the *Act* goes on to state that if the landlord does not comply with the requirement to return a deposit within 15 days, the landlord must pay the tenant double the amount of the deposit.

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

**38** (6) *If a landlord does not comply with subsection (1), the landlord*  
*(a) may not make a claim against the security deposit or any*  
*pet damage deposit, and*  
*(b) must pay the tenant double the amount of the security*  
*deposit, pet damage deposit, or both, as applicable.*

Therefore, I find that the Landlord is in breach of section 38(7) of the Act, and that pursuant to section 38(6) of the Act the value of the pet damage deposit for this tenancy has doubled in value to \$2,745.00. I order the Landlord to return this doubled value of the pet damage deposit to the Tenants in full.

Additionally, I find the company policy, of this Landlord, to withhold the full deposit amount for a tenancy, pending a decision on a claim that is for only a fraction of the amounts being held, to be unreasonable. It would be reasonable to expect that a landlord would return any portion of a deposit they were not claiming against, in accordance with section 38 of the Act.

As this Landlord withheld the entire deposits for this tenancy, pending the decision of these proceedings, I find that this Landlord must pay the interest on the full deposit amounts from the beginning of this tenancy to the date of this decision, between October 1, 2022, to January 31, 2024, in the amount of \$60.09.

**Is the Landlord entitled to recover the cost of the filing fee?**

**Are the Tenants entitled to recover the cost of the filing fee?**

Finally, section 72 of the Act gives me the authority to order the repayment of a fee for an application for dispute resolution. As the Landlord has not been successful in their application, I find that the Landlord is not entitled to recover their filing fee paid for their application.

As the Tenants have been successful in their application, I find that the Tenants are entitled to recover their \$100.00 filing fee paid for their application.

I grant the Tenants a monetary order of \$4,277.59, consisting of \$1,372.50 in the recovery of the security deposit, \$2,745.00 in the recovery of the doubled value of their pet damage deposit, \$60.09 in the interest owed on the deposits for this tenancy, and \$100.00 in the recovery of the Tenants' filing fee for this hearing.

## Conclusion

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

I find that the Landlord breached section 38(7) of the *Act* when they withheld the pet damage deposit for this tenancy without making a claim of pet damage in their application.

I find that the value of the pet damage deposit paid for this tenancy has doubled in value due to the Landlord's breach of section 38(7) of the *Act*.

I order the Landlord to return the full value of security and pet damage deposits, plus interest, for this tenancy, and in accordance with this decision, to the Tenants within 15 days of the date of these proceedings.

I grant the Tenants a Monetary Order in the amount of \$4,277.59. The Tenants are provided with this Order in the above terms, and the Landlord must be served with this Order as soon as possible. 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: January 31, 2024

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Residential Tenancy Branch