



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNSD, MND, FF

### Introduction

This matter proceeded by way of a conference call hearing, pursuant to the *Residential Tenancy Act* (the “Act”), and dealt with cross Applications for Dispute Resolution by the Landlord and Tenant. The Landlord’s Application requested a monetary order for damage to the unit, site or property, recovery of the filing fee and an order to keep part of the security deposit or pet damage deposit. The Tenant’s Application requested a monetary order for the security deposit, pet damage deposit and the filing fee.

Both parties appeared, gave affirmed testimony and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

### Issue(s) to be Decided

Is the Landlord entitled to a monetary order for damages to the unit site or property, the filing fee, and an order to retain all or part of the security deposit and pet damage deposit?

Has there been a breach of Section 38 of the Act by the Landlord?

### Background and Evidence

The parties agree that they have a written tenancy agreement and that the tenancy commenced on August 15, 2010 with a monthly rent of \$1,000.00 due on the first of the month. The parties agree that the Tenant paid a security deposit of \$500.00 and a pet damage deposit of \$500.00 at the start of the tenancy. Both parties provided a copy of the tenancy agreement and a one page addendum in evidence. The parties agree that the rental unit property included a garden shed, although it is not specified in writing. The parties agree the Tenant provided the Landlord with written notice on November 06, 2011 to end the tenancy for December 15, 2011. The parties agree that the Tenant provided her forwarding address in writing to the Landlord on December 14, 2011. The parties agree that the Tenant did not sign over her security deposit or pet damage deposit to the Landlord.

The Landlord stated that they have received and accepted the Tenant's notice of November 06, 2011 that the tenancy would end on December 15, 2011. The Landlord confirmed that they were out of the country when the tenancy ended and that the Tenant provided the keys to the Landlord's son on December 14, 2011. The Landlord stated that no move in or move out inspections were done with the Tenant. The Landlord stated that a garden shed on the rental property was damaged during the tenancy by a bear and that it will likely cost the Landlord \$300.00 to repair the damage. The Landlord stated that the bear pulled down a wall on the garden shed trying to get at whatever was inside the garden shed. The Landlord stated that the Tenant should not have stored garbage inside the garden shed and should have kept it inside the rental unit instead until garbage pick up day. The Landlord refers to a clause in the tenancy agreement which states, "the Tenant must take the necessary steps to repair damage to the residential property caused by the actions or neglect of the Tenant". The Landlord stated that the Tenant should not have kept anything inside the garden shed, including garbage, which could have attracted a bear. The Landlord stated that they have not repaired the garden shed at this time, however, they have estimated that it will cost them \$300.00 to get the repairs done. The Landlord stated that they returned \$700.00 of the security deposit and pet damage deposit to the Tenant by bank transfer on or around January 17, 2012. The Landlord filed an application for dispute resolution on January 23, 2012. The Landlord provided a copy of the estimate that they stated they had written up themselves and a photocopy of a photograph of the damaged garden shed. The Landlord requests to keep \$300.00 from the security deposit plus the filing fee.

The Tenant stated that during the tenancy a bear damaged the garden shed. The Tenant stated that garbage pick up by the City was once per week. The Tenant stated that she thought the garden shed was secure from wildlife accessing it; as a result she stored garbage bags in there until garbage pick up day. The Tenant stated that she was surprised when a bear tore off the wall of the garden shed. The Tenant stated that she reported the incident to the Landlord before the tenancy ended. The Tenant stated that she is not responsible for the actions of the bear and the Landlord had not given her any instructions on garbage storage options in the tenancy agreement or otherwise. Tenant stated that she did not authorize the Landlord to keep any of the security deposit or pet damage deposit when the tenancy ended on December 14, 2011 and she returned the keys to the son of the Landlord. The Tenant stated that she provided the Landlord her written address on December 14, 2011, however, they advised her that they would be out of the country and would not be able to deal with the security deposit or pet damage deposit until they returned in January 2012. The Tenant filed for dispute resolution on January 17, 2012 as she had not received her security deposit or pet damage deposit by that date. The Tenant stated that on January 19, 2012 the Landlord returned \$700.00 of their security deposit and pet damage deposit, instead of the full \$1,000.00, and withheld \$300.00.

The Tenant is seeking double the amount of the security deposit and pet damage deposit as required by the Act, and return of the balance of \$300.00 of the security deposit, plus the filing fee.

### Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find the following:

The parties agreed that the Tenant provided her forwarding address to the Landlord in writing on December 14, 2011. There was no evidence showing that the Landlord had returned the security deposit or pet damage deposit within 15 days of receipt of the forwarding address of the Tenant. Rather the evidence supports that the Landlord returned a portion of the security deposit and pet damage deposit after the Tenant filed her Application on January 17, 2012. The evidence shows that the Landlord withheld \$300.00 from the security deposit and pet damage deposit and returned \$700.00 to the Tenant more than 15 days after receiving the forwarding address in writing.

There was no evidence to show that the Tenant had agreed, in writing, that the Landlord could retain any portion of the security deposit or pet damage deposit.

The Landlord confirmed that that no move in or move out condition inspection reports were done. When a Landlord fails to properly complete a condition inspection report, the Landlord's claim against the security deposit or pet damage deposit for damage to the property is extinguished. Because the Landlord in this case did not carry out move-in or move-out inspections or complete condition inspection reports, as required by section 23 and 35 of the Act, they lost their right to claim the security deposit and pet damage deposit for damage to the property. The Landlord was therefore required to return all of the security deposit and pet damage deposit to the Tenant within 15 days of the later of either the tenancy ending or having received the Tenant's forwarding address in writing.

I find that the Landlord's right to claim against the security deposit and pet damage deposit was extinguished, and they failed to return the Tenant's security deposit within 15 days of having received the Tenant's forwarding address. As a result, section 38 of the Act requires that the Landlord pay the Tenant double the amount of the deposits for a total of \$2,000.00 (\$1,000.00 x 2). As the Landlord has returned \$700.00 of the deposits, albeit beyond the 15 day period, I must deduct this amount from the \$2,000.00. As a result, I grant the Tenant a monetary order for \$1,300.00.

With regards to the Landlord's claim for damage to the unit site or property, section 67 of the Residential Tenancy Act states:

Without limiting the general authority in section 62(3) [*director's authority*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

In a claim for damage or loss under the Regulation the Applicant has the burden of proof to establish his claim on the civil standard, the balance of probabilities.

To prove a loss and have the Respondent pay for the loss the Applicant must satisfy four different elements:

1. Proof that the damage or loss exists,
2. Proof that the damage or loss occurred due to the actions or neglect of the Respondent in violation of the Act or agreement,
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage, and
4. Proof that the Applicant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

The parties do not agree on who is responsible for the damage to the garden shed on the property. However, the parties do agree that a bear pulled down the wall of the garden shed. The Landlord provided insufficient evidence to support that the damage was due to the Tenant's actions or neglect. The Landlord provided no evidence of any instructions provided to the Tenant with regards to storage of garbage. Additionally, the Landlord stated that they have not undertaken the work to repair the garden shed at this time and that the \$300.00 claimed is their estimate for future work. As a result, I dismiss the Landlord's claim for garden shed repair. As the Landlord has not succeeded in their Application, I dismiss the Landlord's request for the filing fee.

As the Tenant has succeeded in her Application, I find she is entitled to recover the \$50.00 filing fee for this Application. As a result, the Tenant is entitled to a monetary order against the Landlord in the total amount of \$1,350.00.

### Conclusion

The Landlord's application is dismissed.

Having made the above findings, I must order, pursuant to section 38 and 67 of the Act that the Landlord pay the Tenant the sum of \$1,350.00, comprised of double the

security deposit and pet damage deposit (\$1,000.00 x 2) and the \$50.00 filing fee, less the \$700.00 already paid.

The Tenant is granted a formal monetary order for **\$1,350.00** and the Landlord must be served with a copy of this order as soon as possible. Should the Landlord fail to comply with this order, the order may be filed in the Small Claims division of the Provincial Court and enforced as an order of that court.

The order is attached to the Tenant's copy of this decision.

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: April 02, 2012.

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Residential Tenancy Branch