



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### Dispute Codes:

MNSD and FF

### Introduction

This hearing was convened in response to an Application for Dispute Resolution, in which the Tenant applied for the return of the security deposit and to recover the filing fee from the Landlord for the cost of filing this Application.

Both parties were represented at the hearing. They were provided with the opportunity to submit documentary evidence prior to this hearing, to present relevant oral evidence, to ask relevant questions, and to make relevant submissions to me.

The Landlord submitted documents to the Residential Tenancy Branch, copies of which were served to the Tenant. The Tenant acknowledged receipt of the Landlord's evidence and it was accepted as evidence for these proceedings.

### Issue(s) to be Decided

Is the Tenant entitled to the return of the security deposit?

### Background and Evidence

The Landlord and the Tenant agree they entered into a tenancy agreement, for which the Tenant paid a security deposit of \$625.00 and a pet damage deposit of \$300.00; that a Condition Inspection Report was completed at the start and the end of the tenancy; that the tenancy ended on May 31, 2013; that the Landlord received a forwarding address for the Tenant, in writing, on May 31, 2013; that the Landlord did not return any portion of the security deposit or pet damage deposit; and that the Landlord did not file an Application for Dispute Resolution claiming against the security deposit.

A copy of the Condition Inspection Report, dated May 31, 2013 was submitted in evidence. On page 3 of the report the Tenant authorized the Landlord to retain the security deposit of \$625.00 and pet damage deposit of \$300.00. There is a note beside this authorization that reads "to be determined by quote for carpet repair".

The Landlord stated that when the Condition Inspection Report was completed he was in possession of a quote for repairing the carpet that was damaged by pets, in the amount of \$1,800.00, which was not provided to the Tenant. He stated that he intended to obtain additional quotes for the repairs. He stated that his understanding of the note on the Condition Inspection Report was that he could retain the security deposit/pet damage deposit in compensation for the damage to the carpet if the quotes exceeded the amount of the deposits and that he would refund a portion of the deposits if any of the quotes were less than the total deposits.

The Tenant stated that when the Condition Inspection Report was completed he believed the Landlord was going to provide him with a quote for repairing the carpet and that the Tenant would approve the retention of all or part of his deposits upon viewing the quotes. He stated that he did not receive a written quote until he was served with evidence for these proceedings.

The Tenant does not dispute that the carpet was damaged by a pet during the tenancy but he contends that the carpets could have been repaired for less than \$925.00.

The Landlord stated that a copy of the Condition Inspection Report and a quote was mailed to the Tenant on June 11, 2013. The Tenant stated that neither item was received in the mail.

The Landlord stated that on June 11, 2013 the Landlord sent a text message to the Tenant, in which he informed him the quote had been mailed. The Tenant acknowledged that this message was received on June 16, 2011. He stated that he did not send a text message in response to this text and he does not recall if he responded to it by telephone.

### Analysis

On the basis of the undisputed evidence, I find that the Tenant paid a security deposit of \$625.00 and a pet damage deposit of \$300.00; that the Landlord did not return any portion of the deposits; that the Landlord did not file an Application for Dispute Resolution claiming against the deposits; that the tenancy ended on May 31, 2013; and that the Landlord received a forwarding address for the Tenant, in writing, on May 31, 2013.

I find, on the balance of probabilities, that a copy of a Condition Inspection Report and a quote for the carpet repair was mailed to the Tenant on June 11, 2013. In reaching this conclusion I was influenced by the testimony of the Landlord and by the text message which the Tenant acknowledged was received, in which the Landlord informs the Tenant the quote has been mailed. I find that this text message corroborates the Landlord's testimony that a quote for the carpet repair was mailed to the Tenant on June 11, 2013. As the Landlord's testimony that the quote was mailed on June 11, 2013 appears credible, I find no reason to question the credibility of his testimony that the Condition Inspection Report was mailed at the same time.

I can find no reason to discount the Tenant's testimony that he did not receive the Condition Inspection Report and the quote in the mail. It is possible that both parties are being truthful in this regard and that the mail may have been lost or delivered to an incorrect address by Canada Post. I therefore find that the Landlord has complied with his obligation to provide the Tenant with a copy of the Condition Inspection Report, as he served the Condition Inspection Report in accordance with section 88 of the *Act*.

Section 38(1) of the *Act* stipulates that except as provided in section 38(3) and 38(4) of the *Act*, the landlord must either repay the security deposit and/or pet damage deposit or make an application for dispute resolution claiming against the deposits within 15 days after the later of the date the tenancy ends and the date the landlord receives the tenant's forwarding address in writing.

Section 38(4) of the *Act* stipulates that a landlord may retain an amount from a security deposit or pet damage deposit if, at the end of the tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant.

On the basis of the Condition Inspection Report, I find that the Tenant clearly authorized the Landlord to retain the security deposit and pet damage deposit, in writing. On the basis of the testimony provided at the hearing, I find that the Tenant authorized the Landlord to retain the deposits for damage to the carpet that was caused by a pet.

I find the intent of the hand written note beside this written authorization, which reads "to be determined by quote for carpet repair", is unclear. I find the Landlord's interpretation that the note meant that some of the deposit would be returned if he obtained a quote for repairing the carpet that was less than \$965.00 is more likely than the Tenant's interpretation that it meant he would authorize the Landlord to retain some portion of his deposits once the Landlord obtained a quote.

If the Tenant's interpretation of the note was accurate, I find it more likely that he would not have specified that the Landlord could keep a specific amount. Rather, I find it likely that he would have left the amounts blank, with a note that specifies an amount would be determined upon receipt of the quote.

Section 6(3) of the *Act* specifies that a term in a tenancy agreement is not enforceable if it is not expressed in a manner that clearly communicates the rights and obligations under it. Although not expressly stated in the *Act*, I find that any term in the Condition Inspection Report that is unclear is also not enforceable. As the term does not clearly indicate that the Tenant has the right to revoke his written consent if he does not agree with the amount on the quote, I find that he does not have that right.

As the Landlord had authority to retain the security deposit/pet damage deposit pursuant to section 38(4) of the *Act*, I dismiss the Tenant's application for the return of his security deposit.

Conclusion

As the Tenant has failed to establish the merit of this Application for Dispute Resolution, I dismiss his application to recover the fee for filing the Application.

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: August 22, 2013

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Residential Tenancy Branch

