



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNR, MNDC, MNSD, FF, MND

This hearing dealt with an application by the landlord for a monetary order. The tenant has also filed an application seeking the return of double the pet deposit. Both parties participated in the conference call hearing. Both parties gave affirmed evidence. This matter was scheduled and went ahead on the original date however more time was required and the matter was adjourned to today's date where the matter proceeded and concluded. Both parties gave affirmed evidence.

### Issue to be Decided

Is either party entitled to a monetary order as claimed?

### Background, Evidence

The tenancy began on January 1, 2012 and ended on August 31, 2013. The tenants were obligated to pay \$950.00 per month in rent in advance and at the outset of the tenancy the tenants paid a \$475.00 security deposit and a \$250.00 pet deposit. The matter of the security deposit was addressed in a separate hearing and will not be part of this decision.

The landlord gave the following testimony:

The landlord stated that he and the tenant had come to an agreement that the tenant vacate the unit by August 31, 2012. The landlord stated that he had re-rented the unit and that the party wished to move in the morning of September 1, 2012. The landlord stated that the tenant did not move out till the late afternoon of September 1, 2012 and that it frustrated the new tenant to the point where she did not take the suite. The landlord stated that the unit was messy and he was unable to re-rent the unit until November 30, 2013.

The tenant gave the following testimony:

The tenant stated that he had contacted the landlord as to when he could meet him to drop off the keys. The tenant stated that he had cleaned and vacated the unit by August 31, 2012 but was directed by the landlord to meet him on the afternoon of September 1,

2012. The tenant stated that he provided the landlord the keys and his forwarding address at that time. The tenant is seeking the return of double his pet deposit.

### Analysis

This was a very contentious hearing; the relationship between these two parties is an acrimonious one. Both parties were cautioned about their behaviour and demeanour during the hearing. Both parties provided testimony and documentation which was considered for this hearing.

As both parties have made a claim I will address the landlords claim and my findings first.

The landlord is seeking loss of revenue for two months in the amount of \$1900.00, a short payment of \$150.00 for the month of April, \$254.80 for cleaning the suite, \$100.00 for main entrance keys from the Strata, \$40.00 for fitness and laundry keys, \$20.00 for indoor key duplicates, and \$184.00 for kitchen flooring replacement. The landlord conceded that he wasn't aware of the importance of a move in and moves out condition inspection reports so he did not conduct them. The landlord stated that he has since become informed of its importance and now conducts them. The tenant adamantly disputes all of the landlords' claims. The tenant stated that he left the unit in better condition than he received it and that all keys were returned as requested by the landlord on September 1, 2013.

Although the landlord submitted a receipt for cleaning the landlord did not conduct the condition inspection reports so I am unable to ascertain any changes in the condition of the unit from the start of the tenancy till its end. The landlord did not provide any receipts to support any of the claims for repairs, or replacement of keys. The landlord stated the tenant moved out on September 4<sup>th</sup> but later stated it was September 1<sup>st</sup>. The landlords' testimony was in direct contradiction to his documentation. In addition the landlord did not provide any evidence of trying to mitigate his rental loss. The landlord was unable to substantiate his claim. Based on all of the above and on the balance of probabilities I dismiss the landlords' application in its entirety.

I address the tenants claim and my findings as follows:

I accept that the tenant provided the Landlord with a forwarding address upon dropping the keys off on September 1 as well via email in December of 2012; and on May 14, 2013 when he served him with the previous Application for Dispute Resolution. I accept the tenants' testimony that he has provided it several times to the landlord. The landlord stated he didn't get the tenants forwarding address. As this is now the third hearing involving these two parties I give that statement no weight.

Section 38(1) of the *Act* stipulates that 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, the landlord must either repay the security deposit and/or pet damage deposit or make an application for dispute resolution claiming against the deposits. In the

circumstances before me, I find that the landlord failed to comply with section 38(1) of the *Act*, as the landlord has not repaid the pet damage deposit nor filed an Application for Dispute Resolution claiming against it.

Section 38(6) of the *Act* stipulates that if a landlord does not comply with subsection 38(1) of the *Act*, the landlord must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable. As I have found that the landlord did not comply with section 38(1) of the *Act*, I find that the landlord must pay the tenant double the pet damage deposit that was paid.

I find that it would have been reasonable and prudent for the tenant to include the claim for a refund of the pet damage deposit with his previous claim for a refund of the security deposit, in which case this Application for Dispute Resolution would not have been necessary. As this Application for Dispute Resolution was not necessary, I find that the tenant is not entitled to recover the fee for filing this Application.

The tenant has established a claim for \$500.00. I grant the tenant an order under section 67 for the balance due of \$500.00. This order may be filed in the Small Claims Court and enforced as an order of that Court.

### Conclusion

The tenant is granted a monetary order of \$500.00.

The landlords' application is dismissed in its entirety.

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: October 17, 2013

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Residential Tenancy Branch

