



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNSD, FF

### Introduction

This hearing dealt with the tenants' Application for Dispute Resolution seeking a monetary order.

The hearing was conducted via teleconference and was attended both landlords and the female tenant.

### Issue(s) to be Decided

The issues to be decided are whether the tenants are entitled to a monetary order for return of the security deposit and to recover the filing fee from the landlords for the cost of the Application for Dispute Resolution, pursuant to Sections 38, 67, and 72 of the *Residential Tenancy Act (Act)*.

### Background and Evidence

The parties agreed the tenancy began on June 1, 2013 as a 1 year fixed term tenancy for a monthly rent of \$1,350.00 due on the 1<sup>st</sup> of each month with a security deposit of \$675.00 and a pet damage deposit of \$300.00 paid. The parties agreed the tenancy continued for a second fixed term beginning on June 1, 2014 and the tenants vacated by June 3, 2015.

The parties agreed the tenants provided the landlords with two forwarding addresses, including a work address, on June 7, 2015.

The landlords submitted into evidence a typewritten explanation of the reasons they wished to withhold the tenants' deposits. They submit the tenants caused damage in excess of \$1,600.00 by the end of the tenancy. The landlord confirmed that move in inspection reports were not completed at the start or end of the tenancy.

Also in support of their position the landlord submitted several text messages between themselves and the female tenant. The text messages are discussing damage to carpets in the rental unit.

In one instance the tenant states that some of the damage was caused by a friend's dog that was at the rental unit during the tenancy. Further, the tenant stated in the text, that she "will make him pay for sure." The tenant explained in the hearing that she meant that if she lost her deposits as a result she would get her friend to pay her.

The text messages go on and the tenant acknowledges that another area of carpet was damaged as a result of the power head on the vacuum. The last text message from the landlord in this chain of correspondence states: "I'll have to get back to you on cost. Even cheap carpet is expensive. May be cheaper to just replace it with laminate. I'll have to check." [reproduced as written]

The landlord submits that he thought this meant that the tenant had agreed the landlord retain the deposits for these damages.

### Analysis

Section 38(1) of the *Act* stipulates that a landlord must, within 15 days of the end of the tenancy and receipt of the tenant's forwarding address, either return the security deposit or file an Application for Dispute Resolution to claim against the security deposit. Section 38(6) stipulates that should the landlord fail to comply with Section 38(1) the landlord must pay the tenant double the security deposit.

Section 38(4) states a landlord may retain an amount from a security deposit or a pet damage deposit if, 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 after the end of the tenancy, the director orders that the landlord may retain the amount.

As such, Section 38(4) requires that the tenant provide the landlord with written agreement for a specific amount of the deposit. Upon review of the all text message correspondence, I find there is no indication of a specific amount to be retained from the deposits. In addition, there is no indication in the correspondence that the landlords intended to keep a portion or all of both deposits.

As a result, I find the landlords did not obtain written agreement to retain any specific amounts as is required under Section 38(4).

Furthermore, Section 38(5) states the right of a landlord to retain all or part of a security deposit or pet damage deposit under subsection 38(4) does not apply if the liability of the tenant is in relation to damage and the landlord's right to claim for damage against a security deposit or a pet damage deposit has been extinguished under section 24 (2) [landlord failure to meet start of tenancy condition report requirements] or 36 (2) [landlord failure to meet end of tenancy condition report requirements].

Based on the landlord's testimony, I find the landlords had extinguished their right to claim for damage against both the security deposit and pet damage deposit by failing to comply with the requirements at the start of the tenancy to provide the tenants with a

copy of a Condition Inspection Report. As a result and pursuant to Section 38(5) of the *Act*, I find the landlords had extinguished their right to retain any portion of the deposits, even if they had a complete written consent from the tenants.

Therefore, I find the landlords had no authority under the *Act* to withhold any portion of the security and pet damage deposits held.

Further, I find that since the landlords received the tenants' forwarding address by June 7, 2015 they had until June 22, 2015 to return the deposits in full to the tenants or file an Application for Dispute Resolution to claim against the deposits to comply with their obligations under Section 38(1).

As the landlords still held both deposits at the time of this hearing and presented no evidence that they had filed an Application for Dispute Resolution, I find the landlords have failed to comply with the requirements set out in Section 38(1). As a result, I find the tenants are entitled to double the amount of both deposits.

### Conclusion

I find the tenants are entitled to monetary compensation pursuant to Section 67 and I grant a monetary order in the amount of **\$2,000.00** comprised of \$1,350.00 double the security deposit; \$600.00 double the pet damage deposit and the \$50.00 fee paid by the tenants for this application.

This order must be served on the landlords. If the landlords fail to comply with this order the tenants may file the order in the Provincial Court (Small Claims) and 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 Section 9.1(1) of the *Residential Tenancy Act*.

Dated: December 18, 2015

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Residential Tenancy Branch

