



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNSD, FFT

### Introduction

This Hearing dealt with the Tenants' application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- A Monetary Order for the return of the Security and Pet Damage deposits; and
- The recovery of the Filing Fee.

The Tenants and the Landlord attended the teleconference hearing. Both parties were affirmed and given a full opportunity to provide testimony and present evidence.

The Landlord confirmed the receipt of the notice of Application for Dispute Resolution and evidence package. No issues of service were raised.

### Issue(s) to be Decided

- Are the Tenants entitled receive a monetary Order for the return of the Security and Pet Damage deposits pursuant to section 38 of the *Act*; and
- Are the Tenants entitled to recover their Filing Fee pursuant to section 72 of the *Act*?

### Background and Evidence

The parties agreed that this tenancy started on October 2011; that the Tenants paid a security deposit in the amount of \$750.00, made in two payments. The 1<sup>st</sup> payment was made on September 9, 2011, for \$500.00, and a second payment in the amount of \$250.00 paid on November 1, 2011. The parties further agreed that there was no move in inspection report, nor a move out inspection report. On February 2, 2016, the Tenants paid a Pet Damage Deposit in the amount of \$500.00.

The parties also agreed that this tenancy ended on November 30, 2016. The rent at the time was \$1,500.00 per month, due on the 1<sup>st</sup> of the month. The Tenants provided their forwarding address to the Landlord on December 31, 2016 in writing, as submitted in evidence.

The Tenants testified that they did not authorize the Landlord to keep any portion of the Security or Pet Damage deposits. The Tenants filed the Application for Dispute Resolution on July 20, 2018.

The Landlord testified that the Tenants were good tenants and described them as nice people. The original agreement was a no pets/no smoking agreement. During the tenancy, the Tenants acquired a dog. The Landlord was hesitant at first about allowing the dog, but eventually agreed as long a Pet Damage Deposit was paid. On February 2, 2016, the Tenants paid a Pet Damage Deposit in the amount of \$500.00

The Landlord further testified that the Tenants vacated the rental unit without paying \$257.00 of the utilities; that the Tenants left a carpet damaged by the dog; a missing door and missing blinds. The Tenants denied the Landlords assertions and stated there were no blinds, no damage to the carpet and that the door was in the rental unit. The Tenants returned the keys, on the Landlords advice to drop them off at his place.

The Landlord did not enter into evidence any documents to support his claim but gave the above reasons for not returning the deposits. The Landlord referenced an upcoming Hearing noted in the cover page of this decision and, where he had submitted his evidence and was making a claim against the deposits. I note that the Application for this upcoming hearing was submitted by the landlord on November 5, 2018.

I offered the parties an opportunity to cross the hearing as they were related matters. The Tenants refused, as they stated they did not have enough time to prepare a response. I also offered the parties an opportunity to consider a possible settlement, and they both declined. I proceeded with hearing the matters at hand.

### Analysis

The *Act* has extensive provisions for landlords and tenants to follow when entering into a landlord/tenant relationship. Section 23 of *Act*, establishes that a Condition Inspection

report must be completed at the start of a tenancy; Section 24 of the *Act* outlines the consequences for landlords and tenants when one is not completed.

Section 24(2) reproduced in part below, states when a landlord's right to the security deposit or pet damage deposit is extinguished:

(2) The right of a landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord

(a) does not comply with section 23 (3) [*2 opportunities for inspection*],

(b) having complied with section 23 (3), does not participate on either occasion, or

**(c) does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.**

**[Emphasis added]**

The parties agreed that there was not condition inspection report completed at the start (or end of the tenancy); consequently, I find that the Landlord extinguished the right to claim against the security deposit and the pet damage deposit for damage to the rental unit.

The parties agreed that the tenants provided the landlord with a forwarding address on December 31, 2016. Section 38 of the *Act* states that:

### **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.

Section 38 (5) stipulates that a landlord cannot retain part of portion of a security or pet damage deposit if the landlord has extinguished their right to claim against the deposits:

(5) The right of a landlord to retain all or part of a security deposit or pet damage deposit under subsection (4) (a) 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*].

Section 38 (6) of the *Act* states that when a landlord does not comply with section 38(1) of the *Act*, the landlord may not make a claim against the deposits and must pay the tenant double the security deposits:

(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**

As the parties acknowledged the landlord received the Tenants' forwarding address on December 31, 2016 and the landlord only submitted their Application for Dispute Resolution seeking to retain the security deposit until November 2018, I find the landlord has failed to submit their Application within 15 days of receipt of the tenant's forwarding address.

I find the Landlord extinguished the right to claim against the security and pet damage deposits for damage to the rental unit and failed to return the deposits or submit an Application for Dispute Resolution seeking to retain any portion of the deposits for other liabilities within 15 days of receiving the Tenant's forwarding address. I find the Landlord must return double the security and pet damage deposits.

As the Tenants are successful in their application, I find they are entitled to the recovery of their filing fee.

Security deposit	\$750.00	Doubling provisions	\$1,500.00
Pet damage deposit	\$500.00	Doubling provisions	\$1,000.00
		Filing Fee	\$100.00
		<b>Total</b>	<b>\$2,600.00</b>

### Conclusion

I issue a Monetary Order in the Tenants' favour, in the amount of \$2,600.00 for the return of the security and pet damage deposits, and statutory compensation owed to the Tenant plus the filing fees. The Tenants must serve the landlord with this order. Should the Landlord fail to comply with this Order, it 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: December 6, 2018

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Residential Tenancy Branch