



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNSDS-DR, FFT

### Introduction

This hearing was convened by way of conference call concerning an application made by the tenant seeking a monetary order for return of the pet damage deposit or security deposit and to recover the filing fee from the landlord for the cost of the application. The application was originally made by way of the Direct Request process which was referred to this participatory hearing.

The tenant and the landlord attended the hearing, and both were accompanied by persons to translate. The translators were affirmed to well and truly interpret the proceedings from the English language to the native languages of the parties and from the native languages of the parties to the English language to the best of their skill and ability. The tenant and the landlord gave affirmed testimony and the parties were given the opportunity to question each other.

No issues with respect to service or delivery of documents or evidence were raised and all evidence provided has been reviewed and is considered in this Decision.

The tenant's Application for Dispute Resolution does not contain the full address of the rental unit, missing the City name. I have amended the Style of Cause to show the full address of the rental unit.

### Issue(s) to be Decided

Has the tenant established a monetary claim as against the landlord for return of the security deposit?

### Background and Evidence

**The tenant** testified that this fixed-term tenancy began on February 1, 2020 and ended on April 30, 2020. Rent in the amount of \$700.00 per month was payable on the 1<sup>st</sup> day of each month and there are no rental arrears. At the outset of the tenancy the landlord collected a security deposit from the tenant in the amount of \$350.00 which is still held in trust by the landlord, and no pet damage deposit was collected. The rental unit is a suite in the upper level of the house, which was shared with 4 other tenants, and the landlord resided in the basement suite.

A copy of the tenancy agreement has been provided for this hearing which specifies that the security deposit will be forfeited if the tenant fails to remain in the rental unit for a minimum of 3 months.

On June 24, 2020, the tenant sent a note to the landlord by registered mail which contained the tenant's forwarding address. A copy of the Canada Post tracking system has been provided as evidence for this hearing which shows that the mail was delivered on June 26, 2020. The tenant has not received any portion of the security deposit from the landlord and did not agree in writing that the landlord could keep it. The landlord has not served the tenant with an Application for Dispute Resolution claiming against the security deposit.

**The landlord** testified that the tenant moved into the rental unit on January 29, 2020 and moved out at the end of March, failing to stay for 3 months as required by the tenancy agreement.

The washer in the rental unit was damaged and the landlord asked all tenants to pay for it, but this tenant refused. The tenancy agreement also states that the security deposit will be forfeited if there are damages. The landlord asked the tenant to move out because the tenant was refusing to pay for the damages.

The landlord did not make an application for dispute resolution claiming the security deposit for rent or for damages.

### Analysis

Firstly, the *Residential Tenancy Act* states that landlords and tenants may not make any contracts that are contrary to the law, and if any such agreement is made, it is not lawful nor is it enforceable.

The *Act* also states that a landlord may not choose to keep a security deposit, but must return it to the tenant within 15 days of the date the tenancy ends or the date the landlord

receives the tenant's forwarding address in writing, whichever is later, or must make an Application for Dispute Resolution claiming the security deposit and serve the tenant. If the landlord fails to do either, the landlord must repay double the amount.

In this case, the parties disagree on when the tenancy ended, however it was either at the end of March, 2020 or the end of April, 2020. Further, the evidence shows that the landlord received the tenant's forwarding address in writing on June 26, 2020 but the landlord has not made an Application for Dispute Resolution and has not returned the security deposit to the tenant and did not have the tenant's consent in writing to keep it. Therefore, I find that the landlord must return double the amount to the tenant.

Since the tenant has been successful with the application the tenant is also entitled to recovery of the \$100.00 filing fee.

I hereby order the landlord to repay the tenant the total sum of \$800.00.

### Conclusion

For the reasons set out above, I hereby grant a monetary order in favour of the tenant as against the landlord pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$800.00.

This order is final and binding and may be enforced.

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: July 27, 2020

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Residential Tenancy Branch