



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNSDB-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 security deposit and pet damage deposit, and to recover the filing fee from the landlord for the cost of the application.

The tenant and an agent for the landlord company attended the hearing and each gave affirmed testimony. The parties were given the opportunity to discuss settlement of this dispute, question each other, and to make submissions.

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.

### Issue(s) to be Decided

Has the tenant established a monetary claim as against the landlord for return of all or part of the pet damage deposit or security deposit?

### Background and Evidence

**The tenant** testified that this fixed-term tenancy began on March 1, 2020 and was to revert to a month-to-month tenancy after February 28, 2021. The tenant was verbally advised about a promotion in order for the landlord to fill a new building. The landlord's manager at the time said there was no catch and the tenant could just use it to pay for the move, and no documentation about it was signed. The incentive to move in was \$1,000.00.

The parties mutually agreed to end the tenancy effective May 30, 2020, and a copy of the mutual agreement has been provided for this hearing. The tenant assisted in

locating a new tenant and new tenants moved in within hours of the move-out condition inspection report being completed, so there was no loss of rental revenue for the landlord.

Rent in the amount of \$1,438.00 was payable on the 1<sup>st</sup> day of each month and there are no rental arrears to the end of May, 2020. At the outset of the tenancy the landlord collected a security deposit from the tenant in the amount of \$719.00 as well as a pet damage deposit in the amount of \$719.00. The rental unit is a condominium suite, and a copy of the tenancy agreement has also been provided as evidence for this hearing.

The tenant provided the landlord with a forwarding address on the Mutual Agreement to End Tenancy which is dated May 30, 2020. Around June 22, 2020 the tenant requested that the landlord return the security deposit and pet damage deposit and on June 26, 2020 the tenant received a statement from the landlord. About the 1<sup>st</sup> week in July, 2020 the tenant received a cheque from the landlord dated June 29, 2020 in the amount of \$485.84. The landlord has not returned the balance of the deposits and has not served the tenant with an Application for Dispute Resolution claiming the deposits.

**The landlord's agent** testified that if the landlord were to allow the tenant to keep the incentive after ending the tenancy early, the landlord would be out a lot of money. The manager at the time should have explained it better at the beginning of the tenancy. The landlord allowed the tenant out of her lease early, a good will gesture on the landlord's part even though the landlord was not obligated to do so.

To say that there was no loss of rental revenue because the rental unit was re-rented immediately, is not entirely true; if the unit was not vacated by the tenant, the person who moved in would have taken a different suite. A lot of suites were vacant.

The landlord did not make an Application for Dispute Resolution claiming the security deposit, and the landlord's agent testified that during the COVID-19 Pandemic, there were a lot of issues with tenants, and the landlord's agents tried to do what they could to accommodate people. Other tenants agree that the incentive should go back to the landlord and don't request the security deposit back.

The landlord submits that the tenant should not be permitted to retain the \$1,000.00 conditional move-in incentive, and the money already sent to the tenant should stand.

### Analysis

The *Residential Tenancy Act* does not permit a landlord to be judge and jury with respect to security deposits or pet damage deposits. A landlord has 15 days from the

later of the date the tenancy ends or the date the landlord receives the tenant's forwarding address in writing to return the deposit(s) in full or make an Application for Dispute Resolution claiming against the deposit(s). If the landlord fails to do either, the landlord must repay the tenant double the amount of the deposit(s). There is no discretion on my part. Further, a landlord may only claim against a pet damage deposit for damages caused by a pet.

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.

(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.

In this case, the tenancy ended on May 30, 2020 and the landlord received the tenant's forwarding address in writing the same day. The landlord returned a portion of the security deposit, but not until June 29, 2020 at the very earliest, which is the date of the landlord's cheque. The parties agree that the landlord has not made an Application for Dispute Resolution, and therefore, I find that the tenant is entitled to double the amount of the deposits or \$2,876.00. The landlord has returned \$485.84, and I find that the tenant has established a claim for the difference of \$2,390.16.

Since the tenant has been successful with the application, the tenant is also entitled to recovery of the \$100.00 filing fee, and I grant a monetary order in favour of the tenant as against the landlord in the amount of \$2,490.16.

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 \$2,490.16.

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: August 21, 2020

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Residential Tenancy Branch