



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      DRI, MNDC, MNSD, OLC, FF, O

### Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- authorization to obtain a return of double her pet damage and security deposits (the deposits) pursuant to section 38;
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62;
- an order regarding a disputed additional rent increase pursuant to section 43;
- authorization to recover her filing fee for this application from the landlord pursuant to section 72; and
- other unspecified remedies.

The landlord did not attend this hearing, although I waited until 11:12 a.m. in order to enable him to connect with this teleconference hearing scheduled for 11:00 a.m. The tenant attended the hearing and was given a full opportunity to be heard, to present evidence and to make submissions. The tenant testified that she sent the landlord a copy of her dispute resolution hearing package by registered mail on August 9, 2012. She provided the Canada Post Tracking Number and Customer Receipt to confirm this mailing. She testified that this package was returned to her as unclaimed by the landlord. In accordance with sections 89 and 90 of the *Act*, I am satisfied that the landlord was deemed served with the tenant's dispute resolution hearing package on the fifth day after the package's registered mailing, August 14, 2012.

At the hearing, it became apparent that as this tenancy ended by July 22, 2012, there was no need to consider the tenant's applications to dispute an additional rent increase or to seek an order requiring the landlord to comply with the *Act*. Those elements of the tenant's application are withdrawn.

### Issues(s) to be Decided

Is the tenant entitled to a monetary award for the return of her pet damage and security deposits? Is the tenant entitled to a monetary award equivalent to the amount of her pet damage and security deposits as a result of the landlord's failure to comply with the

provisions of section 38 of the *Act*? Is the tenant entitled to a monetary award for losses arising out of this tenancy? Is the landlord entitled to recover the filing fee for this application from the tenant?

### Background and Evidence

This periodic tenancy began on December 1, 2011. Monthly rent by the end of this tenancy was set at \$850.00, payable in advance on the first of each month. The tenant testified that the landlord continues to hold her \$425.00 security deposit and \$175.00 pet damage deposit, both paid on December 1, 2011.

The tenant's application for a monetary award of \$1,730.00 included the following:

<b>Item</b>	<b>Amount</b>
Return of Pet Damage & Security Deposits (\$425.00 + \$175.00= \$600.00)	\$600.00
Monetary Award for Landlords' Failure to Comply with s. 38 of the <i>Act</i>	600.00
Denial of Access to Suite due to Landlord's Rekeying of Suite before end of Tenancy	180.00
Loss of Quiet Enjoyment of Premises	350.00
Recovery of Filing Fee for this application	50.00
<b>Total Monetary Order Requested</b>	<b>\$1,780.00</b>

The tenant testified that the only address she has been given for the landlord is the dispute address. She confirmed this by providing a copy of the Residential Tenancy Agreement which shows no address for the landlord. The tenant testified that she posted her forwarding address in writing on the door of the rental unit where the landlord has been conducting his business on July 23, 2012. She entered into written evidence a copy of the letter she posted on the door of the rental unit for the landlord in which she requested the return of her security deposit and her forwarding address.

### Analysis

Section 38(1) of the *Act* requires a landlord, within 15 days of the end of the tenancy or the date on which the landlord receives the tenant's forwarding address in writing, to either return the deposit or file an Application for Dispute Resolution seeking an Order allowing the landlord to retain the deposit. If the landlord fails to comply with section 38(1), then the landlord may not make a claim against the deposit, and the landlord must return the tenant's security deposit plus applicable interest and must pay the tenant a monetary award equivalent to the original value of the security deposit (section

38(6) of the *Act*). With respect to the return of the security deposit, the triggering event is the latter of the end of the tenancy or the tenant's provision of the forwarding address. Section 38(4)(a) of the *Act* also allows a landlord to retain an amount from a security or 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."

Based on the tenant's undisputed evidence, I find that the landlord has not returned the tenant's deposits in full within 15 days of receipt of the tenant's forwarding address in writing. Section 88(g) of the *Act* allows a tenant to serve a document such as the tenant's July 23, 2012 letter containing her forwarding address by posting the document on the door of the address where the landlord has been conducting his business. There is no record that the landlord applied for dispute resolution to obtain authorization to retain any portion of the tenant's deposits. The tenant gave undisputed sworn testimony that the landlord has not obtained her written authorization at the end of the tenancy to retain any portion of her deposits.

In accordance with section 38 of the *Act*, I find that the tenant is therefore entitled to a monetary order amounting to double the deposits with interest calculated on the original amount only. No interest is payable over this period.

Although the landlord should not have installed new locks on the tenant's suite until she yielded vacant possession of the rental unit to the landlord, I do not find that the tenant has incurred any actual losses resulting from this action. In addition, the landlord may have considered the rental unit to have been abandoned at that time as the tenant had removed all of her belongings from the rental unit by the time the locks were changed on July 23, 2012. I also find that the tenant has not provided sufficient evidence to substantiate her claim that she is entitled to a monetary award for her loss of quiet enjoyment of the rental premises during this tenancy. For these reasons, I dismiss the tenant's application for a monetary award for losses arising out of this tenancy.

As the tenant has been successful in her application, I allow her to recover her filing fee from the landlord.

### Conclusion

I issue a monetary Order in the tenant's favour under the following terms which allows the tenant to recover her original pet damage and security deposits, plus a monetary award equivalent to the value of her deposits as a result of the landlords' failure to comply with the provisions of section 38 of the *Act*, and her filing fee:

Item	Amount
Return of Pet Damage & Security Deposits (\$425.00 + \$175.00 = \$600.00)	\$600.00
Monetary Award for Landlords' Failure to Comply with s. 38 of the <i>Act</i>	600.00
Recovery of Filing Fee	50.00
<b>Total Monetary Order</b>	<b>\$1,250.00</b>

The tenant is provided with these Orders in the above terms and the landlord(s) must be served with a copy of these Orders as soon as possible. Should the landlord(s) fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders 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: October 25, 2012

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Residential Tenancy Branch