



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes                      MNDC, MNSD, FF

### 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 all or a portion of her security deposit pursuant to section 38; and
- authorization to recover his filing fee for this application from the landlord pursuant to section 72.

The tenant attended the hearing by conference call and gave undisputed affirmed testimony. The landlord did not attend or submit any documentary evidence.

The tenant stated that he was feeling unwell and wished to have his wife, G.P. appear and speak on his behalf as his agent.

The tenant's wife, G.P. (the tenant) stated that the landlord was served with the notice of hearing package and the submitted documentary evidence in person on April 22, 2015 with a witness (a neighbor). In accordance with sections 88 and 90 of the Act, I find that the landlord was deemed served with the notice of hearing package and the submitted documentary evidence on April 22, 2015, the same day.

### Issue(s) to be Decided

Is the tenant entitled to a monetary order for money owed or compensation for damage or loss, for return of double the security deposit and recovery of the filing fee?

### Background and Evidence

This tenancy began on October 31, 2010 on a fixed term tenancy of 2-3 years as shown by the submitted copy of the signed tenancy agreement dated October 21, 2010. The monthly rent is

\$1,700.00 payable on the 1<sup>st</sup> day of each month and security deposit of \$1,700.00 was paid. A "No Pets" provision was noted in the section for a pet deposit.

The tenant stated that on February 19, 2015 a fire occurred at the rental property making it un-habitable after the fire. The tenant stated that the fire was due to arson as investigated by the police. The tenant stated that the landlord was provided with the forwarding address in writing on March 1, 2015 by Canada Post Registered Mail to the rental property as listed on the signed tenancy agreement. The tenant also stated that the landlord was again re-served with the forwarding address in writing on March 10, 2015 to the rental property and the landlord's primary residence. The tenant has provided a copy of the Canada Post Registered Mail Customer Receipt Tracking numbers for each service as confirmation. The tenant seeks compensation for double the security deposit and recovery of 1/3 of the February rent as the rental property was rendered un-habitable through no fault of the tenant.

### Analysis

Section 38 of the Act requires the landlord to either return all of a tenant's security deposit or file for dispute resolution for authorization to retain a security deposit within 15 days of the end of a tenancy or a tenant's provision of a forwarding address in writing. If that does not occur, the landlord is required to pay a monetary award pursuant to subsection 38(6) of the Act equivalent to the value of the security deposit.

I accept the undisputed affirmed testimony of the tenant and find that the tenant has provided the forwarding address in writing to the landlord on March 1, 2015 and again on March 10, 2015 by Canada Post Registered Mail. The landlord has not returned the \$1,700.00 security deposit within the allowed timeframe, nor has the landlord made an application for dispute resolution for authorization to retain the security deposit.

Section 19 of the Act states,

### **Limits on amount of deposits**

- 19 (1) A landlord must not require or accept either a security deposit or a pet damage deposit that is greater than the equivalent of 1/2 of one month's rent payable under the tenancy agreement.

It is clear based upon the undisputed affirmed testimony of the tenant and the submitted copy of the signed tenancy agreement that the landlord failed in this regard.

I find that the tenant has established a claim for the return of double the \$1,700.00 security deposit for a claim of \$3,400.00.

I also find based upon the undisputed affirmed testimony of the tenant that the tenancy ended through no fault of the tenant due to the arson fire and is entitled to recover the pro-rated remaining portion of the rent from February 19 to 28 for \$566.66.

The tenant having successfully established a monetary claim is entitled to recovery of the \$50.00 filing fee.

Although the tenant's application for a monetary claim was \$3,400.00, I find that this was a mathematical error as the tenant's details of dispute clearly outline the tenant's request for the return of double the security deposit and recovery of 1/3 of the monthly rent.

I issue a monetary Order in the tenant's favour under the following terms, which allows the tenant an award of double his security deposit, recovery of the pro-rated rent and the recovery of the filing fee

\$3,400.00 entitlement awarded for return of double the security deposit  
\$566.66 entitlement awarded for recovery of pro-rated rent  
\$50.00 entitlement awarded for recovery of filing fee  
\$4,016.66 Total entitlement awarded

#### Conclusion

The tenant is granted a monetary order for \$4,016.66.

The landlord must be served with this Order. Should the landlord fail to comply with this Order, this Order 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: September 25, 2015

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Residential Tenancy Branch

