



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes                      MNDC, MNSD, FF, RPP

### Introduction

This hearing dealt with an application by the tenant seeking the return of double the security deposit and a monetary order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement. Both parties attended the hearing and were given full opportunity to present evidence and make submissions. The parties acknowledged receipt of evidence submitted by the other and gave affirmed testimony.

### Issue to be Decided

Is the tenant entitled to a monetary order as claimed?

### Background, Evidence

The tenant's testimony is as follows. The tenancy began on May 1, 2012 and ended on July 2, 2013. The tenants were obligated to pay \$1850.00 per month in rent in advance and at the outset of the tenancy the tenants paid a \$900.00 security deposit. The tenant stated that the landlord promised him that the tenancy was to be for three years but never gave him a copy of the tenancy agreement. The tenant stated that the landlord promised him one month's rent and moving costs if he asked the tenant to move out before the three years was up.

The tenant stated that landlord was intimidating and harassing and that his quiet enjoyment was breached on numerous occasions by the landlord. The tenant stated that the landlord had his mail delivered to the home even though he didn't live there. The tenant stated that the landlord constantly bothered him about his mail. The tenant stated that the landlord withheld his personal belongings such as his table, TV. and 20-22 pairs of shoes.

The tenant is applying for the following:

1.	Return of double the deposit	\$1,800.00
2.	Moving Costs and One Month's rent as compensation	\$4458.20
3.	Loss of Quiet Enjoyment	\$4000.00
4.	Loss of Personal Items	\$1791.80

	Total	<b>\$12, 050.00</b>

The landlords' testimony is as follows. The landlord stated that the tenancy was only for one year, not the three years the tenant alleges. The landlord stated that they met the obligations of guaranteeing the tenant a full year tenancy and that the tenant is not entitled to anything else. The landlord stated that they did not receive the tenants forwarding address until they received the Notice of Dispute Resolution Hearing documents. The landlord stated that they only attended once per week to collect their mail and that the tenant never mentioned that it was a problem. The landlord stated that when they asked the tenant to provide the key to the community mailbox so that they could make a copy, the tenant declined. The landlord stated that the tenant abandoned many items which he never came to pick up. The landlord stated that they wanted him to remove these items but he never did so.

### Analysis

Section 67 of the Act states that when a party makes a claim for damage or loss the burden of proof lies with the applicant to establish their claim. **To prove a loss the applicant must satisfy all four of the following four elements:**

1. Proof that the damage or loss exists,
2. Proof that the damage or loss occurred due to the actions or neglect of the other party in violation of the Act, Regulation or tenancy agreement,
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage, and
4. Proof that the applicant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

I address each of the tenants' claims and my findings as follows.

1. Return of double the deposits -  $\$900.00 \times 2 = \$1800.00$ .

The tenant stated that he gave the landlord his forwarding address in writing in July 2015. I asked the tenant on 4 separate occasions if this was the only time he did that. The tenant confirmed each and every time. When I explained that Section 39 of the Act requires a tenant to provide their forwarding address in writing within one year, the tenant then changed his testimony and stated he provided it in June 2013 and then changed it to July 2013.

The landlord stated that they never received the tenants forwarding address until served notice of this hearing. I found the tenants' testimony to unreliable and contradictory. In addition, the tenant did not have any documentation that could corroborate his testimony. I find that the

tenant did not comply with Section 39 of the Act and therefore has lost the right to make a claim for the security deposit, accordingly; I dismiss this portion of his application.

2. One Month's rent \$1850.00 + Moving Costs \$2608.20= \$4458.20

The tenant stated that the landlord promised him that if the landlord ended the tenancy before three years had passed he would compensate the tenant by giving him one month's free rent and pay for moving costs.

The landlord disputes this claim. The landlord stated that the tenancy agreement was for one year and that the tenant stayed beyond it. The landlord stated that no compensation is payable.

I agree with the landlord. I found the tenants testimony on this issue to be suspect. The tenant first gave testimony that the tenancy was for two years then later changed it to three years. In addition, the tenant did not have any supporting documentation to corroborate his claim. Based on the unreliable and inconsistent testimony of the tenant, and in the lack of any supporting evidence, I dismiss this portion of the tenants claim.

3. Loss of Quiet Enjoyment - \$4000.00

The tenant stated that the landlords continually harassed and bothered him about their mail. The tenant stated that they came to the home 4-5 times per week to pick up their mail. The tenant stated that he is entitled to the amount for the disruption to his privacy.

The landlord disputes this claim. The landlord stated that the parties agreed from the outset of the tenancy that the landlord would pick up their mail once per week. The landlord stated that they had requested a copy of a key to the community mailbox to avoid contacting the tenant, the tenant declined. The landlord stated that the tenant only brought this to their attention at the end of the tenancy.

As outlined above, the applicant must meet all four grounds to be granted a monetary claim. The tenant did not give specifics as to when the mail issue became a problem and what steps, if any, he took to mitigate the situation. In addition, the tenant did not provide sufficient evidence to quantify the amount as sought. Based on the above and on a balance of probabilities, I dismiss this portion of the tenants' application.

4. Personal Items – 1791.80

The tenant stated he was unable to move all his items on the last day of the tenancy and had to return the following day. The tenant stated that when he returned the following day, the locks had been changed. The tenant stated that the landlord refused to return his TV, new table and 20-22 pairs of shoes. The tenant stated that his shoes are worth more than the amount as claimed.

The landlord disputes this claim. The landlord stated that the tenant left “random garbage behind” and nothing of value. The landlord stated that the tenant left so much rubbish behind that they had to delay the new incoming tenants’ by 15 days. The landlord stated that numerous attempts were made to have the tenant pick up his items but to no avail.

The tenant has not satisfied me of any of the four grounds as required. The tenant has not provided evidence to support this claim and I therefore dismiss this portion of his application.

The tenant has not been successful in his application.

### Conclusion

The tenants’ application is dismissed in its entirety.

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 07, 2015

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Residential Tenancy Branch

