



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes: MNSD MNDC FF

### **Introduction**

Both parties attended the hearing and the landlord agreed she received a copy of the Application by registered mail. The tenant requests:

- a) An Order to return double the security deposit pursuant to Section 38;
- b) A monetary order for costs incurred for a vet bill due to negligence of the landlord and for facilities not provided as promised; and
- c) To recover the filing fee for this application.

### **Issue(s) to be Decided:**

Has the tenant proved on the balance of probabilities that they are entitled to the return of double the security deposit according to section 38 of the Act and to other costs incurred? Are they entitled to recover the filing fee?

### **Background and Evidence**

Both parties attended the hearing and were given opportunity to be heard, to present evidence and make submissions. It is undisputed that the tenant paid a security deposit of \$550 and a pet damage deposit of \$500 in November 2014. It is undisputed that they vacated on July 31, 2015 and provided their forwarding address in writing on July 31, 2015. The rent was \$1100 a month. The tenant's full deposit has never been returned and they gave no permission to retain any of it. The parties agreed that the landlord sent \$350 back which she said was all she could afford as they had financial and other problems. The landlord noted the unit suffered some damages in this Application but she had not made an Application to claim against the tenants. I note she has up to two years from the end of the tenancy to make a damage claim.

The tenants also claim \$150 a month for 7 months as the shower in the second bathroom was not functional as it was a small round one and had no doors installed. If they attempted to turn on the water, the water came out on the floor. In evidence is an offer from them to complete this project but the landlord refused for lack of funds..

In addition, the tenants claim compensation for a vet bill and medication for \$459.54. They said the landlord had left rat traps in the unit without warning them. They found most of them and removed them but they came home from work one day and found one of their dogs very sick for he had found a trap between the washing machine and the wall and eaten it. They called the vet and he advised them to induce vomiting and then tested the dogs twice and prescribed anti acids because the poison can cause death. They noted the poison is a controlled substance which the Pest Control Act requires persons to handle carefully and not put it where it is accessible to animals or children. The landlord said the traps were not exposed and the poison was in the black boxes which can only be opened with a special key to put the poison inside. She pointed out that the lease agreement states there are problems of mice in the suite, especially in winter.

In evidence are emails, offers of the tenant to fix the second shower, photographs of encased professional traps and the tenancy agreement. On the basis of the documentary and solemnly sworn evidence presented at the hearing, a decision has been reached.

.

**Analysis:**

On preponderance of the relevant evidence for this matter;

**Section 38(1)** of the Act provides as follows (**emphasis mine**)

**38(1)** Except as provided in subsection (3) or (4) (a), **within 15 days after the later of**

38(1) (a) the date the tenancy ends, and

38(1) (b) the date the landlord receives the tenant's forwarding address in writing,

The landlord **must** do one of the following:

38(1)(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;

38(1) (d) file an application for dispute resolution to make a claim against the security deposit or pet damage deposit.

I find the landlord failed to repay the security deposit, or to make an application for dispute resolution within 15 days of receiving the tenant's forwarding address in writing and is therefore liable under Section 38(6) which provides:

**38(6)** If a landlord does not comply with subsection (1), the landlord

38(6) (a) may not make a claim against the security deposit or any pet damage deposit, and

38(6) (b) **must** pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

The landlord had deposits totally \$1050 and was obligated under Section 38 to return this amount if they determined not to seek it's retention through Dispute Resolution. The amount which is *doubled* is the original amount of the deposit. As a result I find the tenant has established an entitlement claim for \$2100 less the \$350 refunded by the landlord on August 17, 2015.

In respect to the tenant's further claim for compensation for the failure of the landlord to provide a useable shower in the second bedroom and the cost of the vet bill, I find awards for compensation are provided in sections 7 and 67 of the Act. Accordingly, an applicant has the onus of proof on the balance of probabilities to prove the following:

1. That the other party violated the Act, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

Section 67 of the Act does not give the director the authority to order a respondent to pay compensation to the applicant if damage or loss is not the result of the respondent's non-compliance with the Act, the regulations or a tenancy agreement.

I find the weight of the evidence is that the landlord rented the suite to the tenants on the basis of there being two bathrooms. Because of the landlord's negligence or delay and violation of their agreement, the tenants had no functional second bathroom until December 23, 2014 and never had a useable shower in the second bathroom. This resulted in guests and children going into their bedroom to use their ensuite for the 7 months of their tenancy. I find them entitled to a rent rebate of \$150 for December 2014 when the bathroom was not functional. However for the remaining 6 months, the lack of the shower doors resulted in very little unusable space. The rest of the two bedroom, two bathroom suite was functional. Therefore, I find for the remaining 6 months, \$75 a

month (\$450) would be a more appropriate rebate for loss of use of the shower. I find the tenant entitled to recover \$600 total rent rebate for the partial loss of use of this second bathroom (\$150+450).

In respect to the vet bill, I find the weight of the evidence is that the landlord left rat or mice traps containing poison in the unit without warning the tenants although she knew they had dogs and a cat. I find this action of the landlord was negligent and a violation of the Act as it endangered the health and safety of the tenants and their animals. Although the landlord contended there was a warning in the lease, I find the lease merely advises not to leave food out as mice can come inside in winter. I find this is not sufficient warning of hidden rat traps containing poison. The landlord contended the poison was in containers accessed by a key but I find the dog ingested the whole container so the container was inadequate to protect the tenants' pets or visiting children. I find the landlord responsible for the vet and medicine bill as the tenant incurred this cost to mitigate the damage to the dog. I find the tenants entitled to recover their vet bill and medicine costs in the amount of \$459.54.

### **Conclusion:**

The tenant's application is granted with recovery of the filing fee. I find the tenants entitled to a monetary order as calculated below:

Double security and pet deposits	2100.00
Rebate for Loss of bathroom or shower use	600.00
Vet bill and medicine	459.54
Filing fee	50.00
Less refund August 17, 2015	-350.00
Total Monetary Order to Tenant.	2859.54

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: January 14, 2016

---

Residential Tenancy Branch

