



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes: MNSD RR MNDC FF

### **Introduction**

Both parties attended the hearing and agreed the tenant's Application for Dispute Resolution was served by registered mail. I find the documents were served pursuant to sections 88 and 89 of the Act for the purposes of this hearing. The tenant applies pursuant to the *Residential Tenancy Act* (the Act) for orders as follows:

- a) An Order to return double the security deposit pursuant to Section 38; and
- b) An Order for a refund of rent as compensation for the landlord infringing on their peaceful enjoyment contrary to section 28.

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

Has the tenant proved on the balance of probabilities that she is entitled to the return of double the security deposit according to section 38 of the Act? Has she proved that the landlord disturbed their peaceful enjoyment contrary to section 28 of the Act and she should be compensated by a refund of two months rent?

### **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 tenancy began under a prior owner in July 2014 and the landlord, as new owner, assumed the tenancy in February 2015. It is undisputed that the tenant paid a security deposit of \$625 and her rent was \$1250 per month. The tenant vacated the unit on December 15, 2015 and said she provided her forwarding address in writing on March 25, 2016 by dropping it off to the landlord with a witness. The landlord said he did not recall receiving her letter but his wife may have done so. The tenant read the letter on the telephone. His wife was not able to be present for the conference. The tenant's deposit has never been returned and she gave no permission to retain any of it. The landlord said they did not file an Application to claim against the deposit but retained it because the tenant owed two weeks rent when she left.

Both parties invited me to call some witnesses for them. When I told them to contact the witnesses themselves and have the witnesses call into the conference, they both said their witnesses were not available to answer the phone as they were travelling or at work.

The tenant also claims two months refund of rent for she claims the landlord disturbed her peaceful enjoyment contrary to section 28 of the Act. She admitted she had 3 small children who can be very noisy. She said the landlord was constantly knocking at her door saying they could not sleep because of the noise. She said it was often in the guise of offering to help. She recounted one episode that really disturbed her. She was with a friend at 1:00 a.m. and the children awoke. She let them run around so they would not be so noisy. She said the female landlord texted her asking if everything was okay and then she came down and knocked at the door at 2:00 a.m., really embarrassing the tenant.

The landlord said they had had small children themselves and they offered to help the tenant in a kindly way by babysitting etc. He said they were forced to complain about the noise for other tenants were complaining and their peaceful enjoyment had to be protected too. He said one tenant left because of the noise. He said his wife texted when a child was shrieking at 2 a.m. in the morning and again, there was a child screaming for about 45 minutes for her mother in the early hours. He said his neighbours were out in the street wondering if they needed to call for help. He said they had no intention of bothering the tenant, they were trying to help her and also help control the noise for other occupants in the home.

On the basis of the documentary and solemnly sworn evidence presented at the hearing, a decision has been reached.

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**Analysis:**

The Residential Tenancy Act provides:

Return of security deposit and pet damage deposit

*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.*

- (4) A landlord may retain an amount from a security deposit or a pet damage deposit if,*  
*(a) 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, or*  
*(b) after the end of the tenancy, the director orders that the landlord may retain the amount.*
- (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 most situations, section 38(1) of the Act requires a landlord, within 15 days of the later 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 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 pay the tenant double the amount of the security deposit (section 38(6)).

I find the evidence of the tenant credible that she paid \$625 security deposit in July 2014 and vacated on December 15, 2015. I found her evidence credible that she served the landlord personally with her forwarding address in writing on March 25, 2016; although the landlord did not recall receiving it, I find he agreed his wife may have received it. I find she gave no permission for the landlord to retain the deposit and has not received the refund of her security deposit. I find the tenant entitled to recover double her security deposit.

In respect to the tenant's claim for a refund of rent for loss of her peaceful enjoyment, I find insufficient evidence that the landlord was disturbing her peaceful enjoyment by texting her or coming to her door to request that she quiet her children. Section 28 of the Act states a tenant is entitled to freedom from **unreasonable disturbance**. I find by the tenant's own admission, her children were very noisy in the early hours of the morning. I find other tenants and neighbours were unreasonably disturbed by this noise and the landlord, in knocking on the tenant's door, was simply trying to protect the peaceful enjoyment of other occupants as is their duty pursuant to section 28 of the Act. I find by knocking on her door even in the early morning hours, the landlord was not unreasonably disturbing the tenant as it was in response to her children being very noisy in the early morning hours. I find the landlord's actions were reasonable and did not violate the Act. As noted to the tenant in the hearing, section 29 requires Notice to Enter the unit. No notice is required for a landlord to knock on a tenant's door and request the noise that is disturbing others be stopped. I dismiss this portion of the tenant's claim.

**Conclusion:**

I find the tenant entitled to a monetary order as calculated below. I dismiss the balance of the tenant's claim without leave to reapply. No filing fee is involved as it was waived.

|   |                |
|---|----------------|
| Original security deposit (no interest 2014-15) | 625.00         |
| Twice the deposit pursuant to section 38        | 625.00         |
| <b>Total Monetary Order to Tenant</b>           | <b>1250.00</b> |

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 07, 2016

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Residential Tenancy Branch