



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MND MNDC MNSD FF

### Introduction

This hearing was convened in response to cross-applications by the parties pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

Landlord:

- a monetary order for damages pursuant to section 67;
- authorization to retain all or a portion of the tenant’s security deposit in partial satisfaction of the monetary order requested pursuant to section 38;
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

Tenants:

- 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 the security deposit pursuant to section 38;
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

The hearing was conducted by conference call. The landlord did not attend this hearing, although I waited until 1:50 p.m. in order to enable the landlord to connect with this teleconference hearing scheduled for 1:30 p.m. Tenant K.A.E. attended the hearing and was given a full opportunity to be heard, to present evidence and to make submissions.

The tenant testified that on August 8, 2016, she sent a copy of the tenant’s Application for Dispute Resolution and Notice of Hearing to the landlord by registered mail. A registered mail tracking number was provided in support of service.

Based on the above evidence, I am satisfied that the landlord was served with the Tenant's Application for Dispute Resolution and Notice of Dispute Resolution Hearing pursuant to sections 89 & 90 of the Act. The hearing proceeded in the absence of the landlord.

As the landlord did not attend the hearing, the landlord's application is dismissed without leave to reapply.

### Issues

Are the tenants entitled to a return of all or a portion of the security deposit, including double the amount?

Are the tenants entitled to a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67?

Are the tenants entitled to recover the filing fee for this application from the landlord?

### Background and Evidence

The tenancy began on September 1, 2013 with a monthly rent of \$1875.00 payable on the 1<sup>st</sup> day of each month. The tenant paid a security deposit of \$925.00 and a pet deposit of \$462.50 at the start of the tenancy. The parties agreed to a deduction of \$125.00 from the pet deposit and the balance of \$332.50 was returned to the tenant. The landlord returned \$185.00 of the security deposit and is retaining the balance of \$740.00. The tenants only agreed to a deduction of \$205.00 from the security deposit at the end of the tenancy.

The tenants are claiming a return of the balance of the security deposit of \$535.00 (\$740.00 less \$205.00 agreed deduction). The tenants argue that the landlord failed to return the security deposit within 15 days of the date the landlord received the tenants forwarding address in writing. The tenant testified that the landlord was provided a forwarding address by e-mail on or before May 3, 2016. The tenant referred to an e-mail from the landlord dated May 3, 2016 in which the landlord acknowledged receiving the forwarding address. The e-mail was provided in the landlord's evidence package. The tenant argues that they should be entitled to double the security deposit as the landlord's application is frivolous. The tenant testified that they have not to date been served with the landlord's application for dispute resolution.

The tenants are also claiming reimbursement for costs associated with various appliance repairs paid for by the tenants during the course of the tenancy. The tenant

testified that these repairs were approved by the landlord. The tenant testified that she has e-mails from the landlord supporting that the repairs were approved but the e-mails were not submitted in the tenant's evidence package.

### Analysis

Section 38 of the Act provides that when a tenancy ends, the landlord may only keep a security deposit or pet deposit if the tenant has consented in writing, or the landlord has an order for payment which has not been paid. Otherwise, the landlord must return the deposit, with interest if payable, or make a claim in the form of an Application for Dispute Resolution. Those steps must be taken within fifteen days of the end of the tenancy, or the date the tenant provides a forwarding address in writing, whichever is later. A landlord who does not comply with this provision may not make a claim against the deposit and must pay the tenants double the amount of the security deposit, pet deposit, or both, as applicable.

I find the tenants did provide a forwarding address in writing to the landlord. Section 71(2)(c) of the Act provides the Director the authority to order that a document is sufficiently given or served for the purposes of the Act, in cases where it has not been served in strict accordance with the Act. Electronic mail is not an acceptable method of service pursuant to section 88 of the Act; however, I find the landlord was sufficiently served in this case. The e-mail evidence referred to by the tenant confirms the landlord received the forwarding address plus the landlord made its own application to retain the security deposit.

The tenant's security deposit was not refunded in full within 15 days as required by section 38 of the Act. Although the landlord made an application to retain the deposit, the landlord failed to follow through on that application by attending the hearing and presenting evidence in support of the application. As such, I find the landlord's application to be frivolous and an abuse of the dispute resolution process. As per Residential Tenancy Policy Guideline #17, the doubling provisions of section 38 therefore apply.

I allow the tenants claim for return of the security deposit and award an amount of \$1,440.00, which is double the original security deposit of \$925.00 less the \$205.00 agreed upon deduction (  $[\$925.00 - 205.00] \times 2$  ). The amount of \$185.00 security deposit returned by the landlord is deducted from this award for a net award of **\$1255.00.**

Section 33 of the Act describes “emergency repairs” as those repairs that are urgent, necessary for the health or safety of anyone or for the preservation or use of residential property, and made for the purposes of: repairing major leaks in pipes or the roof; damage or blocked water or sewer pipes or plumbing fixtures; the primary heating system; damaged or defective locks that give access to the rental unit; the electrical systems; in prescribed circumstances, a rental unit or residential property

I find that the tenants undertook steps to repair the appliances on their own initiative and these repairs are not an “emergency repair” within the meaning of the Act. The tenants have provided insufficient evidence that the landlord approved these repairs and agreed to reimburse the tenants for them. If that was the case, I find that it would have been more likely that the tenants would have just withheld rent at the time the repairs were completed. Accordingly, the tenants are not entitled to recover the cost of these repairs. This portion of the tenants claim is dismissed without leave to reapply.

As the tenants were successful in this application, I find that the tenants are entitled to recover the \$100.00 filing fee paid for this application from the landlord for a total monetary award of **\$1355.00**.

### Conclusion

Pursuant to section 67 of the *Act*, I grant the tenants a Monetary Order in the amount of \$1355.00. 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: November 23, 2016

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Residential Tenancy Branch