



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

Both parties attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

As both parties were in attendance I confirmed that there were no issues with service of the tenant's application for dispute resolution or evidentiary materials. The landlord confirmed receipt of the tenant's application package. In accordance with sections 88 and 89 of the *Act*, I find that the landlord was duly served with copies of the tenant's application and evidence.

### Issue(s) to be Decided

Is the tenant entitled to a monetary award equivalent to double the value of their security deposit as a result of the landlord's failure to comply with the provisions of section 38 of the *Act*?

Is the tenant entitled to recover the filing fee for this application from the landlord?

### Background and Evidence

The parties agreed on the following facts. This month-to-month tenancy started in the summer of 2012 and ended November 30, 2016. At the end of the tenancy the monthly rent was \$880.00 payable on the first of each month. The tenant provided a security deposit of \$400.00 at the start of the tenancy and it is still held by the landlord. A condition inspection report was not prepared at the start of the tenancy.

The landlord was unfamiliar with what was entailed in a condition inspection report. The landlord testified that no condition inspection report was performed and no report was completed at the start of the tenancy. The landlord testified that at some point during the

tenancy the landlord and tenant made an agreement that the tenant would repair some of the deficiencies with the rental unit including a broken exterior window and some drywall holes. The landlord testified that this agreement was not in writing. The landlord confirmed that she has not made an application in accordance with the *Act*, to retain the security deposit. The landlord testified that because these repairs were not completed by the tenant they are seeking to retain the security deposit and pay for the repairs.

The tenant testified that she provided the landlord with her forwarding address by a letter dated December 8, 2016, which was hand-delivered to the landlord. A copy of the letter was submitted into evidence. The landlord confirmed receipt of the letter. The tenant testified that she made numerous requests for the landlord to attend a move-out condition inspection report but the landlord did not participate. No condition inspection report was prepared at the end of the tenancy.

The tenant denied that there was an agreement with the landlord that the tenant would perform repairs and in any event said she has not given written authorization that the landlord may retain the security deposit.

### Analysis

Section 38 of the *Act* requires the landlord to either return the tenant's security deposit in full or file for dispute resolution for authorization to retain the deposit 15 days after the later of the end of a tenancy and or upon receipt of the 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 section 38(6)(b) of the *Act*, equivalent to double the value of the security deposit. However, this provision does not apply if the landlord has obtained the tenant's written authorization to retain all or a portion of the security deposit to offset damages or losses arising out of the tenancy as per section 38(4)(a).

I find that the tenant provided written notice of the forwarding address on December 8, 2016. I accept the evidence of the parties that the landlord failed to return the security deposit to the tenant within 15 days of December 8, 2016, the time frame granted under section 38 (1)(c) of the *Act* nor did the landlord make an application claiming against the security deposit during that period. If the landlord had concerns arising from the condition of the rental unit, the landlord should have addressed these matters within 15 days of receiving a copy of the tenant's forwarding address or within 15 days of the end of tenancy. It is inconsequential if repairs to the rental unit were required, if the landlord does not take action to pursue this matter. Landlords are in the business of renting out residential property and it is their responsibility to educate themselves as to what is permitted under the *Act*. The landlord cannot decide to simply keep the damage deposit as recourse for their loss.

The parties have testified that no condition inspection report was prepared at the start of the tenancy. Section 24 of the *Act* outlines the consequences if reporting requirements are not met. The section reads in part:

24 (2) The right of a landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord

...

(c) does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.

Accordingly, I also find that the landlord has extinguished any right to claim against the security deposit by failing to prepare a condition inspection report at the start of the tenancy.

Based on the undisputed evidence before me, I find that the landlord has neither applied for dispute resolution nor returned the tenant's security deposit in full within the required 15 days. I accept the tenant's evidence that she has not waived her right to obtain a payment pursuant to section 38 of the *Act* as a result of the landlord's failure to abide by the provisions of that section of the *Act*. Under these circumstances and in accordance with section 38(6) of the *Act*, I find that the tenant is entitled to an \$800.00 Monetary Order, double the value of the security deposit paid for this tenancy. No interest is payable over this period.

As the tenant was successful in their application, she is entitled to recovery of the \$100.00 filing fee.

### Conclusion

I issue a Monetary Order in the tenant's favour in the amount of \$900.00 against the landlord. The tenant is provided with a Monetary Order in the above terms and the landlord must be served with this Order as soon as possible. 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: February 27, 2017

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Residential Tenancy Branch

