



# 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* ("Act") for:

- authorization to obtain a return of double the amount of the security deposit, pursuant to section 38 of the *Act*;
- a Monetary Order for money owed or compensation for damage or loss under section 67 of *Act*; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72 of the *Act*.

Both the landlord and the tenant appeared at the hearing. The parties were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

The tenant stated that she sent the landlord a copy of her Application for Dispute Resolution and her Monetary Order via regular mail on December 23, 2016. The landlord acknowledged receipt of the package on January 4, 2017. While regular mail is not a recognized method of service for a Monetary Order or an Application for Dispute Resolution as per section 89 of the *Act*, the landlord explained that she had received the package, had a chance to review the materials and wished to proceed with this hearing. Pursuant to section 71(2)(c) of the *Act*, I will allow the Tenant's Application for Dispute Resolution and Monetary Order to proceed.

On January 5, 2017 the landlord sent the tenant a copy of her evidentiary package via regular mail. The tenant acknowledged receipt of this package but did not know the exact date. Pursuant to section, I find that the tenant was duly served with this package in accordance with section 88 of the *Act*.

### Issue(s) to be Decided

Is the tenant entitled to a Monetary Order equivalent to double the value of the 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?

Is the tenant entitled to a Monetary Order for damage or loss under the *Act*?

### Background and Evidence

The landlord testified that this was a fixed term tenancy beginning on January 1, 2016 and ending on January 1, 2017. As part of her evidentiary package, the landlord provided a written copy of the tenancy agreement. Rent was \$1,100.00 per month and a security deposit of \$600.00 continues to be held by the landlord.

The tenant explained that she and the landlord came to a mutual agreement in September 2016 for the tenant to vacate the property. The tenant stated that she was told in September 2016 that the rental unit was sold and that she was to move out. On October 27, 2016 the tenant informed the landlord that she would be vacating the property on November 30, 2016. The tenant said that the landlord agreed to this date and agreed to return her damage deposit. The tenant alleged that on November 19, 2016 she was informed by the landlord that she would not be entitled to a return of the damage deposit because she was breaking their fixed-term tenancy agreement, set to expire on January 1, 2017.

The landlord largely agreed with this version of events, though she questioned the timeline associated with the matter. The landlord explained that no written mutual agreement to end tenancy existed and that she had kept the damage deposit as compensation for the tenant having broken their fixed term tenancy set to end on January 1, 2017. The landlord stated that she was stuck with a vacant rental unit for December 2016 because the tenant had moved out of the unit on November 30, 2016.

The tenant stated that on November 30, 2016 she completed a move-out Condition Inspection with the landlord's mother. She testified that on this report she provided a copy of her forwarding address. A copy of this report signed by both the tenant and the landlord's mother was provided to the hearing by the landlord as part of her evidentiary package.

The tenant continued by noting that on December 1, 2016 she emailed her address to the landlord. A copy of this email was provided as part of the landlord's evidentiary package.

#### Analysis – Return of Damage Deposit

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), or an amount that the Director has previously ordered the tenant to pay to the landlord, which remains unpaid at the end of the tenancy pursuant to section 38(3)(b).

No evidence was produced at the hearing that the landlord applied for dispute resolution within 15 days of receiving a copy of the tenant's forwarding address or following the conclusion of the tenancy. If the landlord had concerns arising from this mutual agreement to end tenancy, 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 the tenant broke a fixed-term tenancy agreement, if the landlord does not take action to pursue this matter. The landlord cannot decide to simply keep the damage deposit as recourse for her loss.

While the landlord acknowledged that she kept the \$600.00 deposit because of a broken lease, the landlord did not receive 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) of the *Act*.

Pursuant to section 38(6)(b) of the *Act*, the landlord is required to pay a monetary award equivalent to double the value of the security deposit. I am making a Monetary award in the tenant's favour in the amount of \$1,200.00 for this item.

As the tenant was successful in her 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 \$1,300.00 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 6, 2017

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Residential Tenancy Branch