



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNSD, MNDC

### Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* ("Act") for:

- a monetary order for money owed or compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("Regulation") or tenancy agreement, pursuant to section 67; and
- authorization to obtain a return of double the amount of her security deposit, pursuant to section 38.

The landlord did not attend the hearing, which lasted approximately 60 minutes. The tenant attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The tenant testified that she served the landlord with her application for dispute resolution hearing package on November 3, 2016, by way of registered mail. The tenant provided a Canada Post receipt and tracking number with her application. In accordance with sections 89 and 90 of the *Act*, I find that the landlord was deemed served with the tenant's application on November 8, 2016, five days after its registered mailing.

### Issues to be Decided

Is the tenant entitled to a monetary award for money owed or compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement?

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

### Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of the tenant, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the tenant's claim and my findings are set out below.

The tenant testified regarding the following facts. This tenancy began on February 26, 2016, when the tenant began living on the upper floor of a house. The tenant moved to the basement suite of the same house on May 1, 2016. Monthly rent for the upper level was initially \$550.00 due on the first day of each month. Monthly rent was increased to \$900.00 for the basement suite beginning on May 1, 2016 but the landlord reduced it to \$800.00 for the tenant until July 2016. The tenant's shelter form indicates that the tenant's portion of rent for the basement suite was only \$500.00 of the total \$900.00.

The tenant testified that she paid a security deposit totaling \$450.00 and the landlord continues to retain this deposit. She said that this deposit was paid in two installments: \$250.00 cash when she first moved in and the remaining \$200.00 cash on May 1, 2016 when she moved to the basement suite. She stated that she received receipts for the above payments but they were inside the rental unit when the landlord locked her out. The tenant provided a copy of an email which indicates that she received an e-transfer from a friend for \$250.00 which expired on May 30, 2016 stating "rent deposit." The tenant claimed that she paid \$200.00 from that to the landlord and kept the remaining \$50.00 for herself.

The tenant testified that she left for a trip out of town in the last week of May 2016 and she returned on June 12, 2016, to find that her belongings had been removed from the rental unit and left on the lawn of the rental property by the landlord. She said that the landlord sent her Facebook messages indicating that she threw the tenant's items out on June 10, 2016. The tenant initially stated that a friend went to check the rental property on June 8, 2016, but then she changed her testimony to indicate that it was on June 10 or 11, to find that the tenant's bed frame, mattress and dresser were out on the rental property lawn. She explained that she did not know why those items were not picked up by her friend to keep for the tenant, probably because he did not have his truck with him.

The tenant stated that when she went to the rental property on June 12, 2016, only her bed frame and mattress were left and she spoke with the landlord about getting all of her belongings back, but the landlord kept yelling at her. She maintained that she did not want to risk her life to enter the rental unit. The tenant explained that she called the police and they agreed to escort her inside the rental unit to retrieve her belongings but

she could see from outside the windows that there was nothing left inside the basement rental unit. She said that the landlord threw out or kept the tenant's belongings. When questioned as to why she did not go inside to check on what was left, the tenant said that the landlord was yelling at her, nothing was left inside anyway and her ride out of town was leaving that same day and she had to leave. The tenant said that she did not check whether the landlord changed the locks to the rental unit because she was afraid to enter.

The tenant said that she lost sentimental items like photographs of her children when they were younger, expensive clothing and perfumes, as well as many other items. She stated that many items were new and were purchased only about four months before she left. She explained that some items were gifts from her boyfriend while others she bought herself. She maintained that she did not have receipts for a lot of things because they were left inside the rental unit. The tenant provided a five-page itemized list of all the items and their values with her application. The tenant seeks compensation of \$10,313.00 for items totaling \$1,767.00 for the bathroom, \$5,422.00 for the bedroom, \$2,279.00 for the living room and \$845.00 for the kitchen. When questioned as to how she could see what was left inside the bathroom from the windows outside the rental unit, she said that she could not, but that most of her belongings were gone so she assumed that the landlord got rid of everything. She said that the photographs of all of the above items were left inside her rental unit when the landlord locked her out.

The tenant seeks the return of double the amount of her security deposit, totaling \$900.00, stating that the landlord did not return her deposit within 15 days of providing a forwarding address in writing. The tenant stated that she provided a forwarding address to the landlord in writing on June 27, 2016, by way of a letter that was sent by registered mail. The tenant provided a photocopy of the front page of the envelope and the Canada Post tracking number for the mailing. The tenant did not provide a copy of the letter, claiming that she thought she had and the forwarding address was on the front of the envelope copy anyway.

The tenant also claims for a \$700.00 security deposit that she said she paid for a new place to move into because she was locked out of the rental unit. She said that the landlord illegally evicted her without giving her a notice to end tenancy. The tenant provided emails from her friend indicating that she received an e-transfer for \$700.00 on June 25, 2016.

The tenant seeks a refund of the \$300.00 rent that she said she paid to the landlord for June 2016. The tenant pointed to Facebook messages where she said the landlord

acknowledged her paying \$300.00 for rent in June. She said that she did not live in the rental unit at all during June. She maintained that she left town in the last week of May and when she returned on June 12, 2016, she was locked out of the rental unit.

### Analysis

Overall, I found that the tenant was not a very credible witness. Her testimony changed frequently throughout the hearing and was not consistent. When confronting the tenant with conflicts in her testimony, she became upset and frustrated, often changing her answers to suit the questions I asked. When questioning the tenant about documentary proof of her claim, she asked why I was asking so many questions and why she had to submit documents for proof.

### Security Deposit

Section 38 of the *Act* requires the landlord to either return all of the tenant's security deposit or file for dispute resolution for authorization to retain the deposit, within 15 days of the end of a tenancy and 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 (section 38(4)(a)) or if an amount at the end of the tenancy remains unpaid (section 38(3)(b)).

I do not accept the tenant's testimony that she paid a security deposit to the landlord, totaling \$450.00. The tenant did not produce any receipts or banking statements proving that she paid this amount to the landlord. She said that the receipts were locked inside the rental unit when the landlord threw her belongings outside. Yet, the tenant's bank statements would show any cash withdrawals to pay the landlord. She produced an email indicating that someone gave her an e-transfer of \$250.00 for a "rent deposit" which expired on May 30, 2016. The tenant said that this deposit was paid when she moved to the basement suite on May 1, 2016. Further, the tenant's shelter form, for when she moved into the basement suite on May 1, 2016, indicates that no security deposit was required.

Accordingly, I find that the tenant did not pay any security deposit of \$450.00 to the landlord. I dismiss her claims to obtain a return of the original and double the amount of the security deposit without leave to reapply.

Monetary Compensation

Pursuant to section 67 of the Act, when a party makes a claim for damage or loss, the burden of proof lies with the applicant to establish the claim. To prove a loss, the applicant must satisfy all of the following four elements, on a balance of probabilities:

1. Proof that the damage or loss exists;
2. Proof that the damage or loss occurred due to the actions or neglect of the other party in violation of the *Act*, *Regulation* or tenancy agreement;
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
4. Proof that the applicant followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

I dismiss the tenant's claim for a refund of June 2016 rent in the amount of \$300.00. I find that the tenant failed to prove that she paid rent for this month. I do not accept the Facebook messages that the tenant said prove that she paid the rent. The printout of the messages does not show who is speaking and whether they are the tenant or the landlord. The tenant did not provide a receipt or bank statements to confirm the above payment and failed part 3 of the above test.

I dismiss the tenant's claim for \$700.00 for a security deposit for a new place. The tenant did not provide a copy of a new tenancy agreement or written documentation for her new place showing that she had to pay a security deposit or the amount of such deposit, to a new landlord. The tenant only provided an email asking her friend for money for a security deposit but did not say where it was for, when her tenancy was starting or any other identifying information. I find that the tenant failed parts 1 and 3 of the above test.

I dismiss the remainder of the tenant's application for the items totaling \$10,313.00 that she said she lost at the rental unit. I find that the tenant failed to mitigate her losses as per part 4 of the above test. She did not return back inside the rental unit with the police, in order to check what items were remaining and what could be salvaged. She said that she thought it would be better and easier to make a compensation claim at the Residential Tenancy Branch instead. I find it unreasonable that the tenant, who said she was scared of the landlord, did not accept the police escort that was offered to her when she herself called the police regarding the situation. The tenant said she had very expensive items and sentimental photographs of her young children inside the unit, yet she did not even attempt to go back inside, particularly when she did not even know whether the landlord had even changed the locks.

I find that the tenant could not see each and every item from outside the window of the unit when she peered in. She admitted that she could not see inside the bathroom, where she claimed numerous items were lost. She could not have seen inside the kitchen cupboards for the glasses, mason jars and other items that she claimed for in her application. Further, the tenant failed part 3 of the above test by failing to provide receipts to demonstrate the amount of the items. She said that she devalued many items based on depreciation and the fact that they were not new but did not state which ones. She also stated that many items were gifts from her boyfriend and purchased four months prior to them being thrown out, so the tenant's boyfriend should have the receipts for those items given that they were so new.

### Conclusion

The tenant's entire application is dismissed without leave to reapply.

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 16, 2017

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Residential Tenancy Branch