



# 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 an application by both parties pursuant to the *Residential Tenancy Act* ("Act"):

The tenant sought:

- authorization to a return of her 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*.

The landlord sought:

- a Monetary Order to for damage or loss under the *Act* pursuant to section 67; 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 Registered Mail on February 23, 2017. The landlord acknowledged receipt of the package. Pursuant to sections 88 and 89 of the *Act*, the landlord is found to have been served with these documents.

### Issue(s) to be Decided

Is the tenant entitled to a return of the security deposit?

Are either party entitled to recover the filing fee for this Application?

Is the landlord entitled to a Monetary Order?

### Background and Evidence

The tenant testified that this was a fixed term tenancy beginning on June 1, 2016 and ending on November 30, 2016. Rent was \$1,350.00 per month and a security deposit of \$700.00 continues to be held by the landlord.

The tenant explained that she vacated the rental unit on November 30, 2016 and performed a condition inspection report with the landlord on that same day. On December 4, 2016 the tenant emailed the landlord a copy of her forwarding address. The landlord acknowledged that the tenant performed a condition inspection report with her on November 30, 2016 and that she received the tenant's forwarding address via email on December 4, 2016.

The landlord largely agreed with this version of events, though she questioned the timeline associated with the matter. The landlord explained that it was her understanding that the tenancy ended on November 28, 2016 and she alleged that the tenant overheld in the rental unit until December 2, 2016. The landlord stated that because of this time that the tenant overheld in the rental unit, she retained the security deposit.

### Analysis – Landlord's Monetary Order

The landlord has applied for a Monetary Order pursuant to section 67 of the *Act*. During the course of the hearing, the landlord explained that the tenant overheld the tenancy by 2 days and that she wished to be compensated for this time. Under section 57(3) the landlord may claim compensation from an overholding tenant for any period that the overholding tenant occupies the rental unit after the tenancy is ended.

The landlord did not provide a copy of the residential tenancy agreement, nor was any other evidence submitted to the hearing demonstrating that the tenant overheld in the unit. The tenant directed my attention to her evidentiary package which contained rental receipts from a moving company. In addition, the tenant provided a copy of a receipt dated December 1, 2016 at 6:49 A.M. from the moving company, indicating that their services were complete. The tenant argued that these evidenced her moving out of the unit.

I find the tenant's evidence and testimony compelling and am therefore dismissing the landlord's claim for a Monetary Order due to the tenant overholding in the rental unit.

#### 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. One of these actions must occur within 15 days after the *later* of either the end of the tenancy and/or upon receipt of the tenant's 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 the tenant overholding following the conclusion of this 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 that the tenant had overheld in the rental unit, if the landlord did 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 \$700.00 deposit because of overholding, 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 return the security deposit. I am making a Monetary Order in the tenant's favour in the amount of \$700.00 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 \$800.00 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.

The landlord's application for a Monetary Order is dismissed.

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: March 20, 2017

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Residential Tenancy Branch