



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MND, MNR, MNSD, FF

### Introduction

This hearing dealt with applications from both the landlord and tenant pursuant to the *Residential Tenancy Act* (the *Act*).

The landlord applied for:

- a monetary order for unpaid rent, for damage to the rental unit, and for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement 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; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The tenant applied for:

- authorization to obtain a return of all or a portion of the security deposit pursuant to section 38.

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 respective applications for dispute resolution or either party's evidentiary materials. The parties confirmed receipt of one another's materials. In accordance with sections 88 and 89 of the *Act*, I find that the parties were duly served with copies of the respective applications and their respective evidentiary materials.

### Issue(s) to be Decided

Is the landlord entitled to a monetary award as claimed?

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

### Background and Evidence

The parties agreed on the following facts. This tenancy started in July, 2014 and ended on February 1, 2017. The monthly rent at the end of the tenancy was \$750.00. The tenant provided a security deposit of \$375.00 at the start of the tenancy and is still held by the landlord.

The parties confirmed that no condition inspection report was prepared at either the start or end of the tenancy. The parties performed a visual walkthrough but no report was prepared. The landlord testified that the tenant did not provide written authorization that the landlord may keep the security deposit but there was a verbal discussion and agreement. The landlord said that the rental unit required significant repairs and cleaning after the tenancy as the rental property was being sold. The landlord provided receipts for various expenses including painting, redoing the flooring and replacing the carpets. The landlord also said that the tenancy is in arrears by \$25.00. The landlord seeks a total monetary award of \$3,455.18.

The tenant testified that a forwarding address was provided to the landlord on February 1, 2017. The landlord confirmed she was provided with the tenant's forwarding address on that date. The tenant said she has not provided any 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 or upon receipt of the tenant's forwarding address in writing. If that does not occur, the landlord must 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 permission to keep all or a portion of the security deposit as per section 38(4)(a).

I accept the evidence of the parties that the tenant provided written notice of the forwarding address on February 1, 2017. The landlord made an application claiming

against the security deposit on March 10, 2017, past the 15 day time frame granted under section 38(1)(c) of the *Act*.

If the landlord had concerns arising from the condition of the rental unit at the end of the tenancy the landlord should have addressed those matters within 15 days of receiving the tenant's forwarding address. Even if there was a legitimate complaint, the landlord must receive written authorization from the tenant pursuant to the *Act* to retain the security deposit. The landlord cannot rely on an oral discussion and agreement to keep the damage deposit as recourse for their loss.

In addition, 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 filed her application to retain the security deposit outside of the 15 day time limit and has failed to return the tenant's security deposit in full. I accept the tenant's evidence that they have not waived their 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 a \$750.00 Monetary Order, double the value of the security deposit paid for this tenancy. No interest is payable over this period.

I find there is insufficient evidence to support the landlord's claim for damages and loss. While I accept the landlord's evidence that the landlord undertook repairs and cleaning after the tenancy had ended, I find there is insufficient evidence that the repairs were required as a direct result of the tenant's actions or negligence. The tenant disputes that cleaning and repairs were required to the extent that the landlord claims. I find that there is insufficient evidence that the landlord needed to perform the repairs, which included carpet replacement, painting and redoing the flooring as a result of the tenant's

violation of the tenancy agreement. The landlord also failed to provide testimony as to when the tenant failed to pay the full rent amount or provide documentary evidence of the tenant's failure to pay the full rent creating a rental arrear as claimed. Consequently, I dismiss the landlord's application for damages and loss.

### Conclusion

I issue a Monetary Order in the tenant's favour in the amount of \$750.00 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: April 7, 2017

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Residential Tenancy Branch