



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNSD, RPP

### Introduction

This hearing dealt with the tenant's Application for Dispute Resolution seeking a monetary order and an order to have the landlord return personal possessions.

The hearing was conducted via teleconference and was attended by the tenant; her agent; and the landlord.

### Issue(s) to be Decided

The issues to be decided are whether the tenant is entitled to a monetary order for return of the security deposit and an order requiring the landlord to return personal possessions to the tenant, pursuant to Sections 26, 38, 65, 67, and 72 of the *Residential Tenancy Act (Act)*.

### Background and Evidence

While the parties could not agree exactly on the dates of this most recent tenancy between the parties they did agree that the rent was \$425.00 per month due on the 1<sup>st</sup> of each month with a security deposit of \$225.00 paid and that the tenancy was to end February 28, 2017.

The tenant testified the landlord had boxed up all of her stuff and moved it outside about a week before the tenancy was supposed to end. The tenant submitted that as a result she did not box any of her belongings and the landlord failed to return all of her foodstuffs, including refrigerated items.

The landlord submitted that the tenant had asked the landlord to prepare her belongings to be moved out and that she did not want any of the food products because she was moving into a treatment centre. The landlord testified the tenant had asked him to donate all of the food stuffs to the food bank, which he states he did after the tenant's movers left them.

The landlord also testified that he had boxed all of the tenant's items, including her food stuffs, and put them on his sundeck that is protected from the weather. The tenant

submitted that the landlord should have ensured that the people the tenant had arranged to move her belongings were took the food boxes as well as the other belongings.

The tenant testified that she provided her landlord with her forwarding address in a letter she wrote and mailed on February 22, 2017. The landlord could not recall when he received it but acknowledged writing the tenant a letter, submitted into evidence by the tenant, to explain why they did not return the deposit.

### Analysis

Section 38(1) of the *Act* stipulates that a landlord must, within 15 days of the end of the tenancy and receipt of the tenant's forwarding address, either return the security deposit or file an Application for Dispute Resolution to claim against the security deposit. Section 38(6) stipulates that should the landlord fail to comply with Section 38(1) the landlord must pay the tenant double the security deposit.

Based on the oral submissions of both parties I accept the tenant mailed, to the landlord, the letter with her forwarding address on February 22, 2017. Pursuant to Section 90 of the *Act* and in the absence of any evidence to the contrary I find the landlord is deemed to have received the forwarding address by February 27, 2017, the day before the tenancy ended.

As a result, I find the landlord had until March 15, 2017 to either return the deposit in full to the tenant or file an Application for Dispute Resolution seeking to claim against the deposit to be compliant with his obligations under Section 38(1). From the submissions of both parties, I also accept that the landlord has not returned any of the security deposit to the tenant or applied to retain any amounts.

Therefore, I find the landlord has failed to comply with the requirements set forth under Section 38(1) of the *Act* and the tenant is entitled to double the amount of the security deposit pursuant to Section 38(6).

To be successful in a claim for compensation for damage or loss the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss; **and**
4. Steps taken, if any, to mitigate the damage or loss.

In regard to the tenant's claim for the return of personal possessions in the amount of \$400.00 worth for food, I find the tenant was responsible for ensuring she removed any and all of her belongings. I also find that it was not the landlord's responsibility to

ensure the tenant's movers were informed of what boxes needed to be taken, regardless of content.

Furthermore, I find the tenant has provided no evidence of what food items were lost or their value. As a result, I find the tenant has failed to establish that the landlord has breached any part of the *Act*, regulation or tenancy agreement that caused the tenant to suffer a loss. In addition, even if I were to accept the landlord had caused the loss the tenant has failed to provide any evidence to establish both what items were lost and the value of the food stuffs.

Therefore, I find the tenant has failed to establish that she is entitled to an order to have any food items returned to her or any compensation in lieu. As a result, I dismiss this portion of the tenant's Application for Dispute Resolution.

### Conclusion

I find the tenant is entitled to monetary compensation pursuant to Section 67 and grant a monetary order in the amount of **\$450.00** comprised of double the amount of the security deposit.

This order must be served on the landlord. If the landlord fails to comply with this order the tenant may file the order in the Provincial Court (Small Claims) and be 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: May 04, 2017

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Residential Tenancy Branch