



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNR, MNSD, MNDC, FF, OLC

### Introduction

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

The landlord applied for:

- a monetary order for compensation for unpaid rent, 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 and pet damage 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 and pet damage deposit pursuant to section 38;
- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67; and
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62.

Both parties attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and call witnesses. The tenant was represented by her counsel, WM (the "tenant").

As both parties were in attendance I confirmed that there were no issues with service. The parties confirmed that they had received one another's applications for dispute

resolution and evidentiary materials. Pursuant to sections 88 and 89 of the *Act*, I find that the parties were duly served with the respective applications and evidence packages.

#### Issue(s) to be Decided

Is the landlord entitled to a monetary award for unpaid rent and for damage and loss arising out of this tenancy? Is the landlord entitled to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary award requested?

Is the tenant entitled to a monetary award 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 landlord entitled to recover the filing fee for this application from the tenant?

#### Background and Evidence

This tenancy was the subject of an earlier Direct Request proceeding where a decision is made on the basis of written evidence without a participatory hearing under the file number on the first page of this decision. As a result of the Direct Request proceeding the landlord was issued an Order of Possession and a monetary order in the amount of \$1,550.00.

The tenancy was ended on March 2, 2017 when the landlord enforced the Order of Possession. The landlord filed the Order in the courts and retained the services of bailiffs to enforce the writ of possession. The landlord submitted the invoice from the bailiffs into written evidence showing that the landlord obtained vacant possession of the rental unit on March 2, 2017. The landlord testified that she has not rented out the unit to a new occupant.

During the tenancy the monthly rent was \$1,550.00 payable on the first of each month. The tenant paid a security deposit of \$750.00 and a pet damage deposit of \$750.00 during the tenancy and those amounts are still held by the landlord. The tenant did not participate in a move-out inspection and no condition inspection report was prepared at the end of the tenancy. The tenant provided the landlord with a forwarding address in writing on March 15, 2017. The tenant testified that she has not given written authorization that the landlord may retain any portion of the security deposit.

The landlord claims the amount of \$3,816.92 under the following heads:

<b>Item</b>	<b>Amount</b>
Bailiff Fees	\$2,046.92
Writ of Possession through SCBC	\$120.00
Unpaid Rent March, 2017	\$1,550.00
Filing Fee	\$100.00
<b>TOTAL</b>	<b>\$3,816.92</b>

### 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 find that the landlord filed her present application to retain the security deposit on March 16, 2017 within the 15 days of March 15, 2017 when the tenant provided a forwarding address, as provided under section 38(1) of the *Act*.

The parties testified that no condition inspection report was prepared at the end of the tenancy. This tenancy ended when an Order of Possession was enforced and the tenant's belongings were removed from the rental unit by bailiffs. I accept the landlord's evidence that she was unable to contact the tenant to schedule a move-out inspection. I accept the evidence that at that point the communication between the parties had deteriorated to the point where it was not possible to arrange a move-out inspection. Consequently, I find that the tenant made it so that the landlord could not contact the tenant in order to arrange a move-out inspection pursuant to section 35(2) of the *Act*. I find that, as the landlord's inability to comply with section 35 of the *Act* was due to the tenant's actions the landlord has not extinguished her right to claim against the security deposit pursuant to section 36 of the *Act*.

Section 67 of the *Act* allows me to issue a monetary award for loss resulting from a party violating the *Act*, regulations or a tenancy agreement. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it

stemmed directly from a violation of the agreement or a contravention on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. The claimant also has a duty to take reasonable steps to mitigate their loss.

On the face of the evidence, I accept that both parties had a duty to abide by the Order of this Branch dated February 21, 2017. In this matter, the tenant was obligated to provide the landlord with vacant possession after February 28, 2017. I find the tenant did not do so, leaving it available to the landlord to have the Order of Possession enforced via the Supreme Court. I find there is only one way to enforce an Order of Possession and the landlord determined to use it. As a result, I find the landlord's costs associated with enforcing the order are valid and therefore I grant a monetary award to enable the landlord to recover the costs of enforcing the order in the claimed amount of \$2,166.92.

I accept the landlord's evidence that the tenant did not pay any rent for the month of March, 2017. I find that the tenant is responsible for the rent for the period they overheld the rental unit on a per diem basis. Based on a monthly rent of \$1,550.00 I find that the tenant is liable for \$100.00, the equivalent of two day's rent.

In accordance with sections 38 and the offsetting provisions of 72 of the *Act*, I allow the landlord to retain the tenant's \$750.00 security deposit and \$750.00 pet damage deposit in partial satisfaction of the monetary award issued in the landlord's favour.

As the landlord was successful in their application, I grant the landlord recovery of their filing fee in the amount of \$100.00.

### Conclusion

I issue a monetary award in the landlord's favour in the amount of \$866.92 under the following terms:

<b>Item</b>	<b>Amount</b>
Bailiff Fees	\$2,046.92
Court Filing Fees	\$120.00
Rent for March 1-2 (\$50/day)	\$100.00
Less Security Deposit	-\$750.00

Less Pet Damage Deposit	-\$750.00
Filing Fee	\$100.00
<b>TOTAL</b>	<b>\$866.92</b>

The tenant must be served with this Order as soon as possible. Should the tenant 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: July 31, 2017

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Residential Tenancy Branch