



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNSD, MNR, MND, MNDC, OLC, FF

### Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties under the Residential Tenancy Act (“the “Act”).

The Landlord filed an Application requesting a monetary order to recover unpaid rent; for damage; and to recover the cost of the filing fee.

The Tenant filed an Application for the return of the security deposit; for money owed or compensation for damage or loss under the Act, Regulation, or tenancy agreement, and to recover the cost of the filing fee.

The Tenant’s agent Mr. S.K. appeared at the hearing; however, the Landlord did not. The Tenant’s agent testified that the Landlord was served with the Notice of Hearing by registered mail on April 27, 2017. The Tenant’s agent provided the registered mail tracking information in support of his testimony. I find that the Landlord was served with the Notice of Hearing in accordance with sections 89 and 90 of the Act.

The Landlord’s agent provided affirmed testimony and was provided the opportunity to present evidence orally and in written and documentary form, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Preliminary and Procedural Matters

The Landlord applied for dispute resolution on March 27, 2017, but failed to attend the hearing. The Landlord’s application is dismissed without leave to reapply.

### Issues to be Decided

- Is the Tenant entitled to the return of double the security deposit?
- Is the Tenant entitled to other compensation for damage or loss?

### Background and Evidence

The Landlord's agent testified that the tenancy began in March 2016. Rent in the amount of \$1,775.00 was due on the first day of the month. The Tenant paid the Landlord a security deposit of \$890.00. The Tenant provided a copy of the tenancy agreement.

### Security Deposit

The Tenant is seeking the return of double the amount of the security deposit plus interest. The Tenant moved out of the rental unit on February 26, 2017. The Tenant's agent testified that the Tenant provided her forwarding address in writing to the Landlord on March 13, 2017. The Tenant provided a copy of the letter.

The Tenant testified that the Landlord did not return the deposit. The Tenant testified that she did not reach an agreement that the Landlord could retain the deposit.

The Landlord made an application to retain the deposit within 15 days of receiving the Tenant's forwarding address, but failed to attend the hearing.

### Rent \$318.75

The Tenant is seeking compensation for being forced to move out. The Tenant found a new rental property prior to moving out and she wants the Landlord to pay her portion of the rent. The Tenant is seeking \$318.75 for the rent she paid for February 15 to February 28, 2017.

### Truck Rental \$191.45

The Tenant is seeking the cost of renting a truck to move. The Tenant's agent submitted that the Landlord did not resolve the issues surrounding noise and privacy and he should be responsible for these costs.

### Analysis

Section 38 (1) of the Act states that within 15 days after the later of the date the tenancy ends, and the date the Landlord receives the Tenant's forwarding address in writing, the Landlord must repay any security deposit or pet damage deposit to the Tenant with interest calculated in accordance with the regulations, or make an application for dispute resolution claiming against the security deposit or pet damage deposit.

Section 7 of the Act states,

*if a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results. A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.*

Based on all of the above, the evidence and testimony, and on a balance of probabilities, I find as follows:

### Security Deposit

I find that the Landlord failed to attend the hearing to make claim against the security deposit. The Landlord applied against the deposit within 15 days of receiving the forwarding address and therefore the doubling provisions of section 38 of the Act do not apply.

The Landlord's claim against the deposit is dismissed. I find that the Tenant is entitled to the security deposit in the amount of \$890.00. There is no interest accrued on the deposit.

### Rent and Moving Truck

I dismiss the Tenant's claim that the Landlord is responsible to pay \$318.75 for her rent and \$191.45 for a moving truck. The Tenant has provided insufficient evidence that the Landlord breached the Act, and that the Tenant took reasonable steps to minimize the damage or loss.

Section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. As the Tenant was partially successful in her

application, I order the Landlord to pay the Tenant \$100.00 for the cost of the filing fee for this hearing.

I grant the Tenant a monetary order in the amount of \$990.00. This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that court. The Landlord is cautioned that costs of such enforcement are recoverable from the Landlord.

### Conclusion

The Landlord failed to attend the hearing and the Landlord's claims are dismissed without leave to reapply.

The Tenant was successful with her claim for the return of the security deposit and filing fee. I grant the Tenant a monetary order in the amount of \$990.00. This order may be filed in the Provincial Court (Small Claims) 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: August 28, 2017

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Residential Tenancy Branch