



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNDC, MNSD, FF

### Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- a monetary order for the return of double the security deposit pursuant to section 38 and 67 of the Act;
- authorization to recover her filing fee for this application from the landlord pursuant to section 72.

The tenant attended the hearing via conference call and provided undisputed affirmed testimony. The landlord did not attend or submit any documentary evidence. The tenant stated that the landlord was served with the notice of hearing package and the submitted 32 pages of documentary evidence via Canada Post Registered Mail. The tenant provided a copy of the Canada Post Registered Mail Receipt and tracking label as confirmation of service for the dispute address. The tenant provided undisputed affirmed testimony that the building manager had verbally provided this as the mailing address for the landlord. The tenant stated that the package was not claimed by the landlord after Canada Post attempted service. I accept the undisputed affirmed evidence of the tenant and find that the landlord was sufficiently served as per sections 90 of the Act.

During the hearing the tenant stated that she wished to cancel item(s) #3 -#5 from her monetary claim and proceed only on item(s) #1-#2, for total monetary claim of \$2,250.00.

### Issue(s) to be Decided

Is the tenant entitled to a monetary order for money owed or compensation for damage or loss, for return of double the security deposit and recovery of the filing fee?

### Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

The tenant seeks an amended monetary claim of \$2,250.00 which consists of:

|            |   |
|------------|---|
| \$1,500.00 | Return of Double the Security Deposit, Sec. 38(6) |
| \$750.00   | Compensation, One Months Rent re: Damaged Room    |

The tenant stated that this tenancy began on September 1, 2015 on a 1 year fixed term tenancy and then thereafter on a month-to-month basis. The monthly rent was \$1,500.00 payable on the 1<sup>st</sup> day of each month and a security deposit of \$750.00 was paid.

The tenant claims that she gave notice to end the tenancy in an email to the landlord on April 1, 2017 to end the tenancy on April 30, 2017. This notice also contained the tenant's forwarding address for return of the \$750.00 security deposit.

The tenant stated that as of the date of this hearing the landlord has not returned the \$750.00 security deposit. The tenant confirmed that she has not been served with an application for dispute from the landlord regarding the return of the security deposit nor has she given permission to the landlord to retain it.

The tenant also seeks compensation of \$750.00 for the loss of use of 1 bedroom in the 2 bedroom rental unit. The tenant equates the loss of the 1 bedroom due to a water leak from the roof which she suffered the loss of on April 1, 2017. The tenant claims that the landlord was also notified of the loss of use on April 1, 2017, but that the landlord chose to not address the repairs. The tenant claims that her roommate moved out primarily because of the condition of the bedroom. The tenant has provided 2 photographs of the damaged bedroom due to a water leak. The photographs depict paint peeling from the corner of the ceiling.

### Analysis

Section 38 of the Act requires the landlord to either return all of a tenant's security and/or pet damage deposit(s) or file for dispute resolution for authorization to retain the security and/or pet damage deposit(s) within 15 days of the end of a tenancy or a

tenant's provision of a forwarding address in writing. If that does not occur, the landlord is required to pay a monetary award pursuant to subsection 38(6) of the Act equivalent to the value of the security and/or pet damage deposit(s).

I accept the undisputed evidence of the tenant and find that the tenant provided notice to vacate the rental unit on April 1, 2017 for April 30, 2017 when she vacated the rental premises. I also find that the landlord was provided with the tenant's forwarding address in writing with this notice on April 1, 2017. As such, I find that the landlord has failed to return the original \$750.00 security deposit which the tenant is entitled.

I find that the landlord having failed to return the \$750.00 security deposit within the allowed 15 day time frame, nor has he filed an application for dispute of returning it is required to pay a monetary award equal to the \$750.00 security deposit.

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. 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 of the *Act* 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.

In this case, I accept the tenant's undisputed affirmed evidence that the second bedroom was damaged due to a water leak as shown by the submitted photograph of the ceiling. However, the tenant has failed to provide sufficient details of how this room was not useable due to the paint peeling from the ceiling. It is clear that the tenant provided a before and after photograph of the peeling paint and the repair of the wall. I note that there is no other apparent damage to the room which would prevent the usage of. I also note that the tenant's claim of ½ of the monthly rent (\$750.00) for the loss of use of 1 bedroom is an arbitrary amount based solely on the loss of the one bedroom and the entire monthly rent of \$1,500.00. As such, this portion of the tenant's claim is dismissed.

The tenant has established a total monetary claim of \$1,500.00.

The tenant is entitled to recovery of the \$100.00 filing fee.

### Conclusion

The tenant is granted a monetary order for \$1,600.00.

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: November 15, 2017

---

Residential Tenancy Branch