



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes

MNSD, O

### 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.

The tenant and her interpreter (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 via Canada Post Registered Mail on July 27, 2017 and has submitted a copy of the Canada Post Customer Receipt Tracking label and receipt as confirmation. The address for the landlord used was provided by the submitted copy of the signed tenancy agreement dated June 20, 2015.

The tenant also filed an amendment to the application for dispute increasing the monetary claim from \$2,400.00 to \$3,600.00 to include compensation under section 38(6) of the Act. The tenant stated that the landlord was served with the amendment and the submitted documentary evidence via Canada Post Registered Mail on December 28, 2017 and has provided a copy of the Canada Post Customer Receipt Tracking label and receipt as confirmation.

I accept the undisputed affirmed evidence of the tenant and find that the landlord has been properly served as per sections 88 and 89 of the Act.

### Issue(s) to be Decided

Is the tenant entitled to a monetary order for compensation/money owed?

### 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.

This tenancy began on July 1, 2015 on a fixed term tenancy ending on June 30, 2017 and then thereafter on a month-to-month basis as shown by the submitted copy of the signed tenancy agreement. The monthly rent was \$2,400.00 payable on the 1<sup>st</sup> day of each month. A security deposit of \$1,200.00 and a \$1,200.00 applicant deposit was paid.

The tenant seeks a monetary claim of \$3,600.00 which consists of:

\$1,200.00	Return of Original Security Deposit
\$1,200.00	Return of Original Appliance Deposit
\$1,200.00	Compensation, Failure to Comply Sec. 38(6).

The tenant provided undisputed evidence that her forwarding address in writing was given to the landlord in a letter dated July 7, 2017 for the return of the security and appliance deposits via Canada Post Registered Mail. The tenant has provided a copy of the Canada Post Customer Receipt Tracking label and receipt as confirmation.

The tenant stated that the tenancy had ended on July 1, 2017, but due to the landlord holding her security and appliance deposits without permission, the keys to the rental unit were not returned to the landlord until July 8, 2017.

The tenant stated since the letter dated July 7, 2017 was served to the landlord, the landlord has only returned an unrelated \$300.00 key fob deposit. No other monies were returned.

### Analysis

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.

Section 38 of the *Act* requires the landlord to either return all of a tenant's security deposit or file for dispute resolution for authorization to retain a security deposit 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 deposit.

In this, case, I accept the undisputed evidence of the tenant and find that the landlord was given the tenant's forwarding address in writing in a letter dated July 7, 2017 via Canada Post Registered Mail as confirmed by the Canada Post Customer Receipt and tracking label.

I also accept the tenants' undisputed evidence that the landlord has failed to return the \$1,200.00 security and the \$1,200.00 appliance deposit within 15 days with the exception of the unrelated \$300.00 key fob deposit. As of the date of this hearing the landlord still holds the two deposits without permission of the tenant.

I order the return of the original \$1,200.00 security deposit and the original \$1,200.00 appliance deposit to the tenant.

The landlord having failed to comply with section 38(1) of the Act by filing for dispute or returning the security deposit is liable under section 38(6) of the Act and is required to pay a monetary award to the tenant equal to the \$1,200.00 security deposit.

The tenant has established a total monetary claim of \$3,600.00.

#### Conclusion

The tenant is granted a monetary order for \$3,600.00.

This order must be served upon the landlord. Should the landlord fail to comply with the order, the 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: January 16, 2018

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Residential Tenancy Branch