



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes:** MNDC, MNSD, CNL, FF

### **Introduction**

This hearing dealt with an application by the tenant pursuant to the *Residential Tenancy Act* for a monetary order for the return of double the security deposit, for the amount of a security and pet deposit paid for the rental unit she moved to, for lost wages, for the filing fee and for other miscellaneous costs incurred. Both parties attended the hearing and were given full opportunity to present evidence and make submissions.

The landlord acknowledged receipt of evidence submitted by the tenant. Both parties gave affirmed testimony.

The tenant testified that she was served with a notice to end tenancy for landlord's use of property on June 28, 2017. However on June 29, 2018 the parties came to an agreement to end the tenancy effective July 16, 2017. The landlord agreed that he would allow the tenant to live rent free starting July 01, 2017.

Despite entering into a mutual agreement to end tenancy on June 29, 2017 and having moved out of the rental unit on July 16, 2017, the tenant made application on July 17, 2017, to dispute the notice to end tenancy. Since the parties entered into a mutual agreement to end tenancy with a set of agreed upon terms, the notice to end tenancy became void and accordingly the tenant's application to dispute the notice is moot,

The tenant provided extensive documentary evidence. All parties' testimonies and evidence have been considered in the making of this decision. As this matter was conducted over 87 minutes of hearing time, I have considered all the written evidence and oral testimony provided by the parties but have not necessarily alluded to all the evidence and testimony in this decision.

### **Issues to be decided**

Is the tenant entitled to a monetary order?

### **Background and Evidence**

The parties entered into a tenancy agreement in the fall of 2013. The monthly rent at the end of tenancy was \$1,400.00 payable on the first of each month. The tenant paid a security deposit of \$650.00. The rental unit is located in lower level of the rental home. The upper level is rented out separately.

The tenant stated that on June 12, 2017 there was a water leak that originated in the upstairs kitchen sink and dripped into the storage area below. The tenant stated that her belongings that were in the storage area were destroyed. The parties agreed that the carpet in the living room was soaked.

The landlord stated that the tenant did not mention any damage to her personal property. The tenant filed a copy of all the text messages that were exchanged between the two parties around the time of the leak. Upon review of the messages, I find that the tenant only describes the water damage to the carpet.

The landlord testified that as soon as he was notified of the leak he had it fixed immediately. He estimated that the water flowed for approximately 20 - 30 minutes before the plumbing was fixed. He agreed that the carpet was soaked and on that same day he rented a carpet machine to shampoo and suck out the water from the carpet.

The landlord stated that being a weekend, it was hard to find trades people to replace the carpet. He initially had someone attempt to replace the carpet with laminate but was not experienced enough. The landlord had to hire a second person and the job was completed on June 21, 2017.

The tenant stated that she was subjected to a mouldy carpet that smelled bad and the inconvenience of ongoing work done in the unit to replace the flooring.

Shortly after the leak, on June 27, 2017, the tenant found out that the upper tenant had bed bugs. The tenant testified that she bought casings for her mattresses which were bed bug proof and is claiming \$125.00. The tenant requested the landlord to have the rental property fumigated. At first the landlord refused to pay for it but did so eventually.

The parties communicated by text message and they decided to end the tenancy. A mutual end to tenancy was entered into by both parties. A hand written note on the agreement states that the landlord will return the deposit to the tenant on July 16, 2017 if the unit is clean and the keys are returned to the landlord.

The parties met on July 16, 2017 and both provided contradictory testimony about this meeting. The landlord stated that the tenant refused to return the keys and so he did not return the deposit. The tenant stated that the landlord did not have money on him so she did not return the keys. The tenant filed copies of text messages which indicate that the parties were trying to come to an agreement without having to go to arbitration.

The tenant stated that the landlord came over accompanied by two men and she felt intimidated. The landlord stated that the two men were the owners of the rental property and he was managing on their behalf. From the text messages, I gathered that the tenant wanted her deposit back and the landlord wanted the keys and the two could not make suitable arrangements for the exchange.

The tenant agreed that she did not give the landlord a forwarding address or instructions of where to mail a cheque for the return of the deposit. On July 17, 2017 the tenant made application for dispute resolution. The tenant stated that her address was provided to the landlord along with the notice of hearing package and he had not returned the deposit as of the date of this hearing.

The tenant has made a claim as follows:

1.	Return of double the deposit	\$1,300.00
2.	Mattress cases	\$125.00
3.	Garbage removal	\$40.00
4.	Deposit for new rental	\$2,050.00
5.	Professional cleaner	\$130.00
6.	Bed frame	\$225.00
7.	Lost property due to flood	\$300.00
8.	Lost wages	\$230.00
9.	Emotional and mental duress	\$500.00
10.	Filing fee	\$100.00
	Total	<b>\$5,000.00</b>

### **Analysis**

#### **1. Return of double the deposit - \$1,300.00**

Section 38(1) of the Act provides that the landlord must return the security deposit or apply for dispute resolution within 15 days after the later of the end of the tenancy and the date the forwarding address is received in writing.

If the landlord fails to repay the security deposit or make an application for dispute resolution within 15 days of receiving the tenant's forwarding address, the landlord is liable under section 38(6), which provides that the landlord must pay the tenant double the security deposit.

I now have to determine whether the landlord received the tenant's forwarding address in writing, prior to receiving the notice of hearing package. Based on the testimony of both parties I find that the tenant by her own admission did not provide a forwarding address in writing.

However the landlord did receive the notice of hearing package in July 2017 and would have had the tenant's forwarding address at that time. A forwarding address only provided by the tenant on the application for dispute resolution form does not meet the requirement of a separate written notice and should not be deemed as providing the landlord with the forwarding address. Additionally, landlords who receive the forwarding address in the application may believe that because the matter is already scheduled for a hearing, it is too late to file a claim against the deposit.

Since I have determined that the tenant had not provided the landlord with a forwarding address, prior to serving the landlord with the notice of hearing package, I find that the landlord had no way of returning the deposit by mail or making application for damages against it. The landlord is not bound by the 15 day time frame after receipt of the forwarding address contained in the notice of hearing.

Therefore I find that the tenant's application was premature, because she had not carried out all of the steps she was supposed to before applying for dispute resolution, which includes providing the landlord with a forwarding address in writing. Accordingly the tenant is not entitled to the return of double the deposit. The tenant is entitled to the return of the base amount of the deposit.

2. Mattress cases - \$125.00
3. Garbage removal - \$40.00

The tenant stated that once bed bugs were found in the unit above, she bought cases for her mattresses. The tenant did not provide documentary evidence by way of invoices or receipts to support her claim for both items #2 and #3. Having reviewed the text messages between the two parties, the tenant has not requested the landlord to reimburse her for these items at the time she incurred the alleged expense. Based on the testimony of the tenant I dismiss her claims for the above two items

4. Deposit for new rental - \$2,050.00

The tenant refers to this claim as an “*emergency damage deposit*”. She testified that due to her “*illegal eviction*” she was forced to find a new place and pay a deposit. The parties agreed that they had entered into a mutual agreement to end tenancy. A copy of the agreement was filed into evidence and the tenant agreed that she had signed the agreement. Since the tenant agreed to move out, I find that the landlord did not evict her. In any event the landlord is not responsible for covering the damage deposit the tenant paid to secure her new accommodation.

5. Professional cleaner - \$130.00

Section 37(2) of the *Residential Tenancy Act* addresses leaving the rental unit at the end of a tenancy. It states that when a tenant vacates a rental unit, the tenant must

- (a) leave the rental unit reasonably clean and undamaged except for reasonable wear and tear and
- (b) give the landlord all the keys or other means of access that are in the possession or control of the tenant and that allow access to and within the residential property.

*Residential Tenancy Policy Guideline#1* states that generally at the end of the tenancy the tenant will be held responsible for cleaning the rental unit. The tenant stated that she hired a professional cleaner to clean the unit at a cost of \$130.00 and is claiming this amount from the landlord. Based on section 37(2) the tenant is responsible for the cost of cleaning. Accordingly the tenant’s claim is dismissed.

6. Bed Frame - \$225.00

The tenant stated that she disposed of her bed frame because of the bed bug problem. The tenant chose to dispose of the bed frame and in addition did not provide sufficient evidence to support her claim. Therefore her claim is dismissed.

7. Lost property due to flood - \$300.00

The landlord stated that the tenant did not inform him about any property that was damaged when the leak occurred. Upon reading the text messages that was the primary mode of communication between the two parties, the tenant makes no mention of damage to her personal property.

The tenant describes the water leak and subsequent damage to the carpet and even states on June 21, 2017 “*Water under the bridge. Happy it’s all resolved now*”

Later text messages request the return of the deposit only and the landlord agreed to give the tenant the deposit in exchange for the keys. However, the relationship turned hostile and the parties were not able to come to an agreement about meeting up for the exchange.

Based on the above, I find that if the tenant had suffered damage to her personal property she would have informed the landlord. I further find that the landlord acted immediately after the leak to fix the plumbing and use a professional rug cleaner to shampoo and dry the carpet.

Based on the testimony of both parties and the documents filed into evidence by the tenant, I must dismiss the tenant's claim for lost property.

8. Lost wages - \$230.00

The tenant stated that she had to prepare the rental unit for fumigation and also had to have her dog outside the unit for six hours for the procedure to be successful. The tenant stated that she missed work and is claiming lost wages. The tenant did not file a copy of a pay slip or other evidence to support her claim. In any event the landlord is not responsible for the tenant's lost wages and therefore her claim is dismissed.

9. Emotional and mental stress - \$500.00

With regard to the tenant's monetary claim for compensation for emotional and mental stress in the amount of \$500.00, I have reviewed the submissions of both parties and I find that the relationship was stressful on both parties for different reasons. Other than the understandable angst and stress which accompanies a state of disagreement and uncertainty, the tenant did not provide compelling evidence to support her claim of compensation for stress during the term of the four year old tenancy and therefore the tenant's claim for compensation in the amount of \$500.00 is dismissed.

However I do find that even though the landlord acted responsibly with regard to fixing the leak, the tenant incurred some inconvenience when the carpet was stripped and the flooring was replaced. In addition the tenant also incurred inconvenience when the fumigation of the unit took place.

*Residential Tenancy Policy Guideline #16* states that an arbitrator may award "nominal damages" which are a minimal award. These damages may be awarded where there has been no significant loss, but they are an affirmation that there has been an infraction of a legal right.

Based on the testimony of both parties, I award the tenant a minimal award of \$200.00 for the inconvenience she endured.

10. Filing fee - \$100

The tenant made this application primarily to recover double the security deposit. However the tenant had not provided the landlord with a forwarding address and therefore did not follow the steps required to obtain the deposit. Most of the remainder of the tenant's application was also dismissed. Accordingly the tenant must bear the cost of filing her own application.

Overall the tenant has established a claim of \$200.00 for nominal damages and \$650.00 for the return of the base amount of the security deposit. I grant the tenant a monetary order under section 67 of the *Residential Tenancy Act*, for **\$850.00**. This order may be filed in the Small Claims Court and enforced as an order of that Court.

**Conclusion**

I grant the tenant a monetary order in the amount of \$850.00

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: January 23, 2018

---

Residential Tenancy Branch