



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDC, MNSD, FF

### Introduction

This hearing was convened in response to an application by the Tenant pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. A Monetary Order for compensation - Section 67;
2. An Order for the return of the security deposit - Section 38; and
3. An Order to recover the filing fee for this application - Section 72.

The Landlord did not attend the hearing. I accept the Tenant’s evidence that the Landlord was served with the application for dispute resolution and notice of hearing (the “Materials”) by registered mail on September 7, 2017 in accordance with Section 89 of the Act. Section 90 of the Act provides that a document served in accordance with section 89 of the Act is deemed to be received if given or served by mail, on the 5th day after it is mailed. Given the evidence of registered mail I find that the Landlord is deemed to have received the Materials on September 12, 2017. The Tenant was given full opportunity to be heard, to present evidence and to make submissions.

### Issue(s) to be Decided

Is the Tenant entitled to the monetary amounts claimed?

### Background and Evidence

The tenancy started on July 1, 2016 and ended on July 15, 2017. Rent of \$750.00 was payable on the last day of each month. At the outset of the tenancy the Landlord

collected \$375.00 as a security deposit. On July 4, 2017 the Tenants provided their forwarding address by email and the Landlord responded to that email. The Landlord has neither returned the security deposit nor made a claim against the security deposit. The Tenant claims return of the security deposit and does not waive return of double the security deposit.

On June 18, 2017 the Landlord sent the Tenant an email telling the Tenant that they must move out of the unit by August 31, 2017. The Landlord informed the Tenant that the Landlord would be moving into the unit. The Tenant was not given any notice to end tenancy for landlord's use on the form approved by the Residential Tenancy Branch. The Tenant claims the equivalent of a month's rent in compensation.

The Tenant informed the Landlord that they would move out of the unit on July 15, 2017 and the Landlord agreed that the Tenant could move out on that date. The Tenant has paid full rent for July 2017. The Tenant claims return of \$375.00 being half the July 2017 rent.

### Analysis

Section 38 of the Act provides 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 the security deposit or make an application for dispute resolution claiming against the security deposit. Where a landlord fails to comply with this section, the landlord must pay the tenant double the amount of the security deposit. Based on the undisputed evidence that the Tenant provided its forwarding address to the Landlord and that the Landlord neither returned the security deposit nor made a claim against the security deposit I find that the Landlord must now repay the Tenant double the security deposit plus zero interest of \$750.00.

Section 51(1) of the Act provides that a tenant who receives a notice to end a tenancy under section 49 [*landlord's use of property*] is entitled to receive from the landlord on or

before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement. Based on the Tenant's own evidence that the Landlord did not give the Tenant a one month notice to end tenancy for landlord's use on an approved form I find that the tenancy was not ended by the Landlord as allowed under the Act. As a result I find that the Tenant is not entitled to one month's compensation claimed and I dismiss this claim.

Section 26(1) of the Act provides that a tenant must pay rent when it is due under the tenancy agreement. Rent is no longer payable after a tenancy ends. Based on the undisputed evidence that the tenancy ended on July 15, 2017 with the Landlord's approval and considering that the Tenant paid the full amount of rent for July 2017 I find that the Tenant has substantiated the claim of **\$375.00**. As the Tenant's application has been primarily successful I find that the Tenant is entitled to recovery of the **\$100.00** filing fee for a total entitlement of **\$1,225.00**.

#### Conclusion

I grant the Tenant an order under Section 67 of the Act for **\$1,225.00**. If necessary, this order may be filed in the Small Claims 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: March 19, 2018

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Residential Tenancy Branch