



# 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 dealt with the tenants' application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- authorization to obtain a return of all or a portion of the security deposit pursuant to section 38;
- a monetary award for damages and loss pursuant to section 67; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

The landlord did not attend this hearing which lasted approximately 20 minutes. The tenant TM (the "tenant") attended, confirmed he represented both co-tenants and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The tenant testified that the application for dispute resolution dated September 11, 2017 and all evidentiary materials were served on the landlord by registered mail sent on September 17, 2017. The tenant provided a Canada Post tracking number as evidence of service. Pursuant to sections 88, 89 and 90 of the *Act*, I find that the tenants' application package was deemed served on the landlord on September 22, 2017, five days after mailing.

### Issue(s) to be Decided

Are the tenants entitled to a monetary award equivalent to double the value of their security deposit as a result of the landlord's failure to comply with the provisions of section 38 of the *Act*?

Are the tenants entitled to a monetary award as claimed?

Are the tenants entitled to recover the filing fee of this application from the landlord?

### Background and Evidence

The tenant provided undisputed evidence regarding the following facts. This month-to-month tenancy began in May, 2017 and ended in July, 2017. The monthly rent for the tenancy was \$2,200.00 payable on the first of each month. A security deposit of \$1,100.00 was paid to the landlord at the start of the tenancy and is still held by the landlord. While the tenant said that a move-in condition inspection report was prepared, no move-out inspection was done and no condition inspection report was prepared at the end of the tenancy.

The tenant said that while they paid the full monthly rent for July, 2017, they vacated the unit on July 22, 2017 as the landlord had new tenants who took possession of the rental unit on that date. Because of this, the tenant seeks a return of the pro-rated rent for the period of July 22 through July 31, 2017 which he calculates to be \$660.00.

The tenant said that he provided the landlord with a forwarding address at the end of the tenancy. The tenant said that he has not given the landlord authorization to retain any portion of the security deposit.

### Analysis

Section 38 of the *Act* requires the landlord to either return the tenant's security deposit in full or file for dispute resolution for authorization to retain the deposit 15 days after the later of the end of a tenancy or upon receipt of the tenant's forwarding address in writing. If that does not occur, the landlord must pay a monetary award, pursuant to section 38(6)(b) of the *Act*, equivalent to double the value of the security deposit. However, this provision does not apply if the landlord has obtained the tenant's written permission to keep all or a portion of the security deposit as per section 38(4)(a).

I accept the undisputed evidence of the tenant that the landlord was given written notice of a forwarding address at the end of the tenancy by July 22, 2017.. I accept the undisputed evidence of the tenant that the landlord did not return the security deposit, did not make an application for authorization to retain the security deposit nor did they have written authorization from the tenants that they may retain any portion of the security deposit.

In addition, the tenant testified that the landlord did not prepare a move-out condition inspection report nor were the tenants offered any opportunity to participate in an inspection. The *Act* provides that the landlord's right to claim against a security deposit is extinguished if they do not offer the tenant 2 opportunities to complete a condition inspection report in accordance with the Regulations.

Accordingly, I also find that the landlord has extinguished any right to claim against the security deposit by failing to prepare a condition inspection report at the end of the tenancy.

Based on the undisputed evidence before me, I find that the landlord has not filed an application to retain the security deposit within the 15 day time limit and has failed to return the tenants' security deposit in full. I accept the tenant's evidence that they have not waived their right to obtain a payment pursuant to section 38 of the *Act* as a result of the landlords' failure to abide by the provisions of that section of the *Act*. Under these circumstances and in accordance with section 38(6) of the *Act*, I find that the tenants are entitled to a \$2,200.00 Monetary Order, double the value of the security deposit paid for this tenancy. No interest is payable over this period.

Section 67 of the *Act* allows me to issue a monetary award for loss resulting from a party violating the *Act*, regulations or a tenancy agreement. 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 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. The claimant also has a duty to take reasonable steps to mitigate their loss.

I accept the tenant's undisputed evidence that despite paying the full rent for July, 2017 the landlord re-rented the suite on July 22, 2017 to new tenants. I find that in so doing, this tenancy ended on July 22, 2017. I accept the tenant's calculation that the pro-rated rent for the period of July 22, 2017 to July 31, 2017 is \$660.00. I find that the tenants are entitled to a monetary award in that amount representing the return of rent paid for July, 2017.

As the tenants' application was successful I also find that they are entitled to recover the \$100.00 filing fee for this application.

Conclusion

I issue a Monetary Order in the tenants' favour in the amount of \$2,960.00 against the landlord. The tenants are provided with a Monetary Order in the above terms and the landlord must be served with this Order as soon as possible. Should the landlord fail to comply with this Order, this 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: April 5, 2018

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Residential Tenancy Branch