



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes: MNSD MNDCT FFT

### **Introduction**

Both parties and an advocate for the tenant attended the hearing and gave sworn testimony. The tenant provided evidence that they had served the landlord with the Application for Dispute Resolution dated March 23, 2018 by registered mail (number in evidence) and personally with their forwarding address. The landlord agreed he had received them. I find the documents were served pursuant to sections 88 and 89 of the Act for the purposes of this hearing. The tenant applies pursuant to the *Residential Tenancy Act* (the Act) for orders as follows:

- a) An Order to return double the security deposit pursuant to Section 38;
- b) For compensation for damages pursuant to sections 7 and 67; and
- c) To recover the filing fee for this application.

### **Issue(s) to be Decided:**

Has the tenant proved on the balance of probabilities that she is entitled to the return of double the security deposit according to section 38 of the Act and to compensation for damages? Is she entitled to recover the filing fee?

### **Background and Evidence**

Both parties attended the hearing and were given opportunity to be heard, to present evidence and make submissions. Both parties agreed the tenant said paid a security deposit of \$750 in September 2015 and rented the unit for \$1500 a month. The tenancy was ended pursuant to a Two Month Notice to End Tenancy and the tenant vacated on February 28, 2018 with her rent up to date. The parties agreed she provided her forwarding address in writing on March 1, 2018. The tenant's deposit has never been returned and he gave no permission to retain any of it.

The landlord said he had not filed an Application to claim against the deposit or returned the deposit for he wanted to return it in cash as this was the method by which she had

paid it. Their schedules were so busy that they had problems arranging a time to meet. The tenant's advocate said there were other options to repay the deposit such as by cheque and the tenant was not requesting cash. The tenant's letter with her forwarding address requests he send the security deposit to her new address.

In addition, the tenant claims \$1639 for damages due to a flood for items as follows:

1. \$80 : Cleaning a duvet and cover. Receipt provided
2. \$498 and \$300 estimated cost to replace a mattress and box spring damaged by the flood. The landlord said the water did not hit the mattress. It was confined to the window and sills below his kitchen. The tenant provided video evidence.
3. \$761 for 4 days lost at work. The landlord said he and contractors cleaned up the water from the leak so she did not have to lose time at work for that. He said his landscapers mistakenly put dirt in front of the garage but moved it within 30 minutes so she could get her car out. The tenant said the construction crews were blocking access and laughed at her when she asked them to move cars etc. She has a 5 year old child and it was dangerous to go out with the stuff in front of her door. Her work schedule in evidence shows she was on call on Feb. 2, 2018 and 16<sup>th</sup> but off sick on February 17, 26, 27 and 28. The tenant says some of the days she had to miss due to the flood and some due to too much stress, noise and dirt. She called the Police once.

The landlord said he was renovating an older home, the carpet was removed and replaced and two sinks were also removed and replaced. There was minimal noise and dirt. He said the tenant said she wanted to take a few days off work to make the move easier. He said at one point on February 2, 2018, the contractor noticed her iPod had water on it and wanted to wipe it dry but she refused and said she was going to the store for a new one. Now she is claiming for a mattress and bedspring that in his opinion were not damaged as the water was confined to the one wall and windowsills. The advocate said the video illustrates the flood was like rain in the suite.

On the basis of the documentary and solemnly sworn evidence presented at the hearing, a decision has been reached.

**Analysis:**

On preponderance of the relevant evidence for this matter, I find:

**Section 38(1)** of the Act provides as follows (**emphasis mine**)

**38(1)** Except as provided in subsection (3) or (4) (a), **within 15 days after the later of**

- 38(1) (a) the date the tenancy ends, and
  - 38(1) (b) the date the landlord receives the tenant's forwarding address in writing,
- the landlord **must** do one of the following:
- 38(1)(c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;
  - 38(1) (d) file an application for dispute resolution to make a claim against the security deposit or pet damage deposit.

I find the landlord failed to repay the security deposit, or to make an application for dispute resolution within 15 days of receiving the tenant's forwarding address in writing on March 1, 2018 and is therefore liable under Section 38(6) which provides:

- 38(6)** If a landlord does not comply with subsection (1), the landlord
- 38(6) (a) may not make a claim against the security deposit or any pet damage deposit, and
  - 38(6) (b) **must** pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

I find the tenant entitled to recover double her security deposit. In respect to her claim for damages, I find there were two instances of water coming from above the tenant's suite which caused some damage to her property. I find the landlord has offered to pay for the \$80 cost of dry cleaning of the duvet and cover.

Regarding her claim for a mattress and box spring, I find her evidence is that they were 5 years old at the time of the water ingress. I find insufficient evidence that they were damaged by the water. I noted on the video that there appeared to be someone on the bed beside the alleged water damage and I could see no stains, other than two small black marks which are to be expected after 5 years of wear. I could see no other indication of water damage although I saw the water on the windowsill, a night table and floor nearby. I find the landlord's evidence credible that he and the contractors dried up the water and he did not observe a wet bed but offered to pay cleaning costs for the duvet and cover which he observed were damp.

Regarding her claim for replacement of wages for lost work time, I find her entitled to one day of compensation or \$190.40 (\$23.80 x 8 hrs). I find the landlord agreed that she had a problem getting her car out of the garage one day due to the landscaping work so this may have made it impossible to get to work. I find the claim for the other three days February 26, 27 and 28 are more likely related to the stress of moving out. I find the Act does not provide that the landlord is responsible to compensate the tenant for time lost due to moving out.

**Conclusion:**

I find the tenant entitled to a monetary order as calculated below and to recover the filing fee for this application.

Double security deposit (750x2)	1500.00
Dry Cleaning cost	80.00
One day lost wages allowed	190.40
Filing fee for this application	100.00
<b>Total Monetary Order to Tenant</b>	<b>1870.40</b>

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: June 26, 2018

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Residential Tenancy Branch