



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDCT, MNSD, FFT

### 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 and pet damage 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 landlords pursuant to section 72.

The landlord did not attend this hearing which lasted approximately 20 minutes. The tenant LN (the "tenant") appeared, confirmed she represented both co-tenants and was given a full opportunity to present affirmed evidence, make submissions, and to call witnesses.

The tenant testified that they had served the notice of dispute resolution dated November 15, 2017 and evidence on the landlord by registered mail on November 27, 2017. The tenant provided a Canada Post tracking number as evidence of service. Based on the undisputed evidence of the tenant I find that the landlord was deemed served with the hearing package on December 2, 2017, five days after mailing, in accordance with sections 88, 89 and 90 of the *Act*.

### Issue(s) to be Decided

Are the tenants entitled to a monetary order as claimed?

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

### Background and Evidence

The tenant provided undisputed evidence regarding the following facts. This fixed term tenancy began in September, 2017 and ended at the end of that month. The rent was \$3,500.00 payable on the first of each month. A security deposit of \$1,750.00 and pet damage deposit of \$1,750.00 were paid to the landlord and are still held by the landlord. No condition inspection report was prepared at either the start or the end of the tenancy.

The tenant seeks a monetary award in the amount of \$9,124.00 for the following items:

Item	Amount
Double Security Deposit (2 x \$1,750.00)	\$3,500.00
Double Pet Deposit (2 x \$1,750.00)	\$3,500.00
Moving Costs	\$1,400.00
Fumigation Costs	\$340.00
Cleaning Costs	\$300.00
Dishwasher Repair	\$84.00
<b>Total</b>	<b>\$9,124.00</b>

The tenant submits that because of the condition of the rental unit and the landlord's failure to take appropriate action when requested, they were forced to pay out of pocket for maintaining the rental unit. The tenant said that they called a professional to repair the dishwasher, fumigate the suite against pests and clean the suite at the end of the tenancy.

The tenant said that because of the landlord's failure to respond they felt they could not remain in the rental unit. The tenant claims the cost of moving out of the rental unit.

The tenant testified that they provided the landlord with a forwarding address in writing by letter dated October 24, 2017. The tenant said they have not given written authorization that the landlord may retain any portion of the security deposit or pet damage 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).

In the case at hand, the tenant gave evidence that they provided a forwarding address in writing by letter dated October 24, 2017. As of the date of the hearing the landlord has failed to either return the deposits or file an application to retain them. I accept the tenants' evidence that they have not provided written authorization that the landlord may retain any portion of the deposits.

In addition, the tenants gave evidence that no condition inspection report was prepared at either the start or the end of the tenancy. Section 24 of the *Act* outlines the consequences if reporting requirements are not met. The section reads in part:

24 (2) The right of a landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord

...

(c) does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.

Based on the undisputed evidence before me, I find that the landlord had extinguished their right to apply to retain the security deposit or pet damage deposit for this tenancy and has failed to return the tenant's deposits in full. I accept the tenants' evidence that they have not waived their right to obtain a payment pursuant to section 38 of the *Act* as a result of the landlord's 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 \$7,000.00 Monetary Order, double the value of the security deposit and pet damage 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.

The tenants' central submission is that the landlord breached the *Act*, regulations and tenancy agreement by failing to take appropriate steps to repair and maintain the rental unit.

Section 32 of the *Act* sets out that the landlord must provide and maintain residential property in a state of repair that complies with the health, safety and housing standards required by law and makes it suitable for occupation by a tenant. The tenants submit that the landlord failed to provide the rental unit in a state of reasonable repair and perform repairs when requested by the tenants.

I find that there is insufficient evidence in support of the tenants' claim. The correspondence between the parties where the tenant raises issues with the condition of the rental unit is insufficient to conclude that the rental unit was in a serious state of disrepair. In any event, I find that the cost of moving is not a loss that is attributable to the landlord. The tenant chose to end this tenancy and move out, the cost of moving is not a loss that is recoverable from the landlord. I dismiss this item claimed by the tenants.

Furthermore, even if there were some repairs that were required, that does not give rise to the tenant's ability to contract for and arrange these repairs without the prior authorization of the landlord or by complying with the requirements of the *Act*. The evidence submitted show that there were some correspondence between the parties regarding the issues in the rental suite. However, simply because the issues were not attended to within the timeframe expected by the tenants does not allow the tenants to simply make arrangements and seek compensation. I find that cleaning, dishwasher repair and fumigation are not emergency repairs as contemplated in the *Act*, and the cost of the work undertaken by the tenant are not recoverable. I dismiss this portion of the tenants' claim.

As the tenants' application was successful the tenants are entitled to recover the filing fee for their application.

### Conclusion

I issue a monetary order in the tenants' favour in the amount of \$7,100.00.

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: June 27, 2018

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Residential Tenancy Branch