



# 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 was convened as a result of the tenant's Application for Dispute Resolution ("application") seeking remedy under the *Residential Tenancy Act* ("Act"). The tenant applied for the return of double their security deposit, for money owed or compensation for damage or loss under the *Act*, plus the recovery of the cost of the filing fee.

The tenant, the landlord, and a support person for the landlord appeared at the teleconference. The tenant and the landlord gave affirmed testimony. The hearing process was explained to the parties. During the hearing the parties presented their evidence. A summary of the evidence is provided below and includes only that which is relevant to the hearing.

The landlord confirmed receiving and reviewing the tenant's documentary evidence prior to the hearing. The tenant stated that they did not receive the landlord's documentary evidence. The landlord confirmed that the tenant was not served with their evidence and as a result, the landlord's evidence was excluded in full as the landlord failed to serve the tenant in accordance with the Residential Tenancy Branch ("RTB") Rules of Procedure ("Rules").

### Preliminary and Procedural Matter

The parties confirmed their email addresses at the outset of the hearing. The parties also confirmed their understanding that the decision would be emailed to both parties and that any applicable orders would be emailed to the appropriate party. The landlord's email address was updated to reflect the landlord's current email address.

Issues to be Decided

- Is the tenant entitled to the return of double their security deposit under the *Act*?
- Is the tenant is entitled to any other monetary compensation under the *Act*, and if so, in what amount?
- Is the tenant entitled to the return of the filing fee under the *Act*?

Background and Evidence

The parties agreed that a written tenancy agreement did not exist between the parties. The landlord was advised that I would deal with that later in this decision as the landlord is required to ensure that all tenancy agreements are in writing under the *Act*. The parties agreed that a verbal tenancy was formed and started September 5, 2018. The monthly rent was \$950.00 per month and was due on the first day of each month. The parties confirmed that the landlord requested a security deposit of \$950.00, which was paid by the tenant. I will deal with the amount requested by the landlord later in this decision.

The tenant has claimed \$1,570.00, as follows:

ITEM DESCRIPTION	AMOUNT CLAIMED
1. Double security deposit of \$950.00	\$1,900.00
2. <i>Less amount of security deposit returned of \$750.00</i>	<i>-\$750.00</i>
3. Transportation fee	\$100.00
4. Hotel fee (\$80.00 x 4 nights for staying at friend's house)	\$320.00
<b>TOTAL</b>	<b>\$1,570.00</b>

Regarding item 1, the parties agreed that the landlord was given the tenant's written forwarding address as of September 14, 2018. The landlord returned only \$750.00 of the tenant's \$950.00 security deposit. The parties agreed that the tenant did not agree in writing to any deductions from the security deposit.

Regarding item 2, this relates to a \$750.00 credit to be deducted from any amount awarded as the tenant confirmed he was paid \$750.00 of the \$950.00 security deposit.

Regarding items 3 and 4, which relate to a transportation fee of \$100.00 and a hotel fee of \$320.00, both of these items were dismissed during the hearing as the tenant failed to provide sufficient evidence to meet all four parts of the test for damages and loss which I will describe further below. Furthermore, the tenant decided not to continue the tenancy so I find the tenant would not be entitled to items 3 and 4 under the *Act*. Therefore, items 3 and 4 are dismissed without leave to reapply, due to insufficient evidence.

### Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on the balance of probabilities, I find the following.

#### *Test for damages or loss*

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in sections 7 and 67 of the *Act*. Accordingly, an applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did what was reasonable to minimize the damage or loss.

In this instance, the burden of proof is on the tenant to prove the existence of the damage/loss and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the landlord. Once that has been established, the tenant must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the tenant did what was reasonable to minimize the damage or losses that were incurred.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

Firstly, section 13(1) of the *Act* requires that all tenancy agreements since January 1, 2004 be in writing. Therefore, I find the landlord breached section 13(1) of the *Act* by creating a verbal tenancy. **I caution** the landlord to ensure that all future tenancy agreements are in writing in accordance with the *Act*.

Secondly, section 19(1) of the *Act* states:

**Limits on amount of deposits**

**19** (1) A landlord **must not** require or accept either a security deposit or a pet damage deposit that is greater than the equivalent of **1/2 of one month's rent** payable under the tenancy agreement.

[Emphasis added]

In this matter, the landlord requested and accepted a security deposit of \$950.00, even though monthly rent was \$950.00, which is a breach of section 19(1) of the *Act*. The maximum the landlord should have requested was \$475.00. Therefore, **I caution** the landlord to comply with section 19(1) of the *Act* in the future.

Regarding item 1, the landlord confirmed that they received the tenant's written forwarding address as of September 14, 2018. The landlord testified that they only returned \$750.00 of the tenant's \$950.00 security deposit. Section 38 of the *Act* applies which states:

**Return of security deposit and pet damage deposit**

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

(a) the date the tenancy ends, and

(b) the date the landlord receives the tenant's forwarding address in writing.

**the landlord must do one of the following:**

**(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;**

**(d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.**

**(6) If a landlord does not comply with subsection (1), the landlord**

**(a) may not make a claim against the security deposit or any pet damage deposit, and**

**(b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.**

[Emphasis added]

In the matter before me, I find that the landlord breached section 38 of the *Act* by failing to return the security deposit in full to the tenant within 15 days of receiving the forwarding address of the tenant in writing on September 14, 2018. Therefore, as the landlord also failed to make a claim against the tenant's security deposit within 15 days of September 14, 2018, I find the tenant is entitled to the return of double the original security deposit of \$950.00 for a total of **\$1,900.00**. I note that the tenant's security deposit accrued \$0.00 in interest since the start of the tenancy.

Regarding item 2, I will deduct \$750.00 from the \$1,900.00 amount as the tenant confirmed receiving \$750.00 from the landlord.

Regarding items 3 and 4, I find the tenant failed to meet all four parts of the test for damages or loss. Therefore, items 3 and 4 are dismissed without leave to reapply, due to insufficient evidence.

As the tenant's application was partially successful, I grant the tenant the recovery of the filing fee in the amount of **\$100.00** pursuant to section 72 of the *Act*.

**Monetary Order** – I find that the tenant has established a total monetary claim in the amount of **\$1,250.00**, comprised of \$1,900.00 for the doubled security deposit, less the \$750.00 portion returned by the landlord, plus the \$100.00 filing fee. I grant the tenant a monetary order pursuant to section 67 of the *Act* in the amount of **1,250.00**.

### Conclusion

The tenant's application is partly successful. The tenant has established a total monetary claim of \$1,250.00 comprised of the return of double their security deposit in the amount of \$1,900.00, less the \$750.00 portion returned by the landlord, plus the

\$100.00 filing fee. The tenant has been granted a monetary order under section 67 of the *Act* in the amount of \$1,250.00. This order must be served on the landlord and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

The landlord has been cautioned twice as described above.

This decision will be emailed to both parties as described above.

This decision is final and binding on the parties, unless otherwise provided under the *Act*, and 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: February 5, 2019

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Residential Tenancy Branch