



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      FFT, MNSD, MNDC

### Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* ("Act") for:

- authorization to obtain a return of all or a portion of their security deposit pursuant to section 38;
- a monetary order for compensation owed for loss or damage under the Act, regulation or tenancy agreement pursuant to section 67; and
- authorization to recover the filing fee for its application from the landlord, pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. The landlord acknowledged receipt of evidence submitted by the tenant including an amendment to her monetary order. The landlord did not submit any documentation for this hearing. I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure; however, I refer to only the relevant facts and issues in this decision.

### Issue to be Decided

Is the tenant entitled to a monetary award equivalent to double the value of her security deposit as a result of the landlord's failure to comply with the provisions of section 38 of the Act?

Is the tenant entitled to a monetary order for compensation?

Is the tenant entitled to recover the filing fee for this application from the landlord?

### Background, Evidence

The tenant's testimony is as follows. The tenancy began on May 1, 2017 and ended on September 28, 2018. The tenants were obligated to pay \$1000.00 per month in rent in advance and at the outset of the tenancy the tenants paid a \$500.00 security deposit. The tenant testified that written condition inspection reports was not conducted at move in or move out. The tenant testified that she moved out as a result of a Two Month Notice to End Tenancy for Landlords Use of Property issued by the landlord on September 10, 2018. The tenant testified that on September 14, 2018 she gave the landlord written notice that she would be moving out on September 28, 2018. The tenant testified that she paid the rent for the month of September and did not receive her one month "free rent" as per the notice. The tenant testified that she provided her forwarding address on in writing on October 10, 2018 by way of registered mail. The tenant is seeking the return of double the security deposit along with the one month's rent plus the recovery of the \$100.00 filing fee for a total claim of \$2100.00.

The landlord gave the following testimony. The landlord testified that he did not dispute the facts as noted above. However, the landlord testified that the tenant left the unit dirty, damaged and left without paying some utility bills. The landlord testified that he will be filing his own application to pursue those claims. The landlord testified that he was surprised the tenants' took this course of action as he made attempts to help them whenever he could throughout the tenancy.

### Analysis

While I have turned my mind to all the documentary evidence and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the tenant's claim and my findings around each are set out below.

The tenant said she is applying for the return of double the security deposit as the landlord has not complied with the s. 38 of the *Residential Tenancy Act*.

Section 38 (1) says that 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.

And Section 38 (6) says 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.**

Based on the documentary evidence before me and the landlords' own testimony that he has not acted as outlined above, I find that the landlord has not acted in accordance with Section 38 of the Act and that the tenant is entitled to the return of double her deposit  $\$500.00 \times 2 = \$1000.00$ .

Section 51 Compensation – \$1000.00

### **Tenant's compensation: section 49 notice**

**51** (1) 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.

The landlord confirmed that he has not given the tenants one month's rent as compensation as required, accordingly; I find that the tenant is entitled to \$1000.00.

The tenant is also entitled to the recovery of the \$100.00 filing fee.

### Conclusion

The tenant has established a claim for \$2100.00. I grant the tenant an order under section 67 for the balance due of \$2100.00. 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: February 15, 2019

---

Residential Tenancy Branch