



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNDCT, MNSD

### Introduction

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

- authorization to obtain a return of double the amount of the tenant's security deposit, pursuant to section 38; and
- a monetary order for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("Regulation") or tenancy agreement, pursuant to section 67.

The two landlords, female landlord ("landlord") and "male landlord" (collectively "landlords"), the tenant and the tenant's agent attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The tenant confirmed that her agent, who is her mother, had permission to speak on her behalf. This hearing lasted approximately 73 minutes.

The landlord confirmed receipt of the tenant's application for dispute resolution hearing package and the tenant confirmed receipt of the landlords' evidence package. In accordance with sections 88, 89 and 90 of the *Act*, I find that both landlords were duly served with the tenant's application and the tenant was duly served with the landlords' evidence package.

### Issues to be Decided

Is the tenant entitled to the return of double the amount of her security deposit?

Is the tenant entitled to a monetary order for compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement?

### Background and Evidence

While I have turned my mind to the evidence and the testimony of both parties, not all details of the respective submissions and arguments are reproduced here. The relevant and important aspects of the tenant's claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on February 1, 2013 and ended on February 4, 2019. Monthly rent in the amount of \$1,925.00 was payable on the first day of each month. A security deposit of \$650.00 was paid by the tenant and the landlords retained \$350.00 and returned \$300.00 to the tenant on February 6, 2019. A written tenancy agreement was signed by both parties. No move-out condition inspection report was completed for this tenancy. The tenant provided a forwarding address in writing to the landlords by way of a letter on February 6, 2019. The landlords did not have any written permission to keep any amount from the tenant's security deposit. The landlords did not file an application to retain the tenant's security deposit.

The landlord stated that a move-in condition inspection report was completed for this tenancy, but the tenant disagreed.

The tenant seeks a return of double the amount of her security deposit of \$650.00, totaling \$1,300.00, minus the \$300.00 already returned and \$60.00, which she agrees the landlords can keep for moving costs, for a balance of \$940.00. The landlords disputed this claim, stating that they did not return the \$60.00 as agreed by the tenant, and an additional \$290.00 for carpet cleaning, which the tenant should have done before moving out. The tenant claimed that she cleaned the carpet and the photographs provided by the landlords of the carpet were inaccurate, as any remaining issues with the carpet were reasonable wear and tear.

The tenant also seeks \$3,150.00 for having to pay an illegal rent increase of \$525.00 for a period of 6 months from August 1, 2018 to February 1, 2019. The tenant stated that her rent was originally \$1,200.00 when she moved into the rental unit and increased to \$1,400.00 later during the tenancy. She claimed that the landlords increased her rent from \$1,400.00 to \$1,925.00 without providing any legal notices of rent increase or obtaining written permission from her. She maintained that she only verbally agreed to this increase because she did not know the law for rent increases.

The tenant explained that she was talking about moving out, never provided any written notice to the landlords, nor did she move out. She maintained that the landlords said

they could get \$2,000.00 per month for rent from other tenants, so if she wanted to stay she could pay \$1,925.00, so she agreed. The landlords agreed with the above information. The landlord claimed that the tenant agreed to pay \$1,925.00 in rent per month as of September 1, 2018, by way of a written message on a social media site and she provided a copy of same; the tenant did not dispute this.

### Analysis

#### Rent Increase

Section 43 of the *Act* regulates rent increases and states the following, in part (my emphasis added):

##### *Amount of rent increase*

43 (1) *A landlord may impose a rent increase only up to the amount*

*(a) calculated in accordance with the regulations,*

*(b) ordered by the director on an application under subsection (3),*

***or***

***(c) agreed to by the tenant in writing.***

*(2) A tenant may not make an application for dispute resolution to dispute a rent increase that complies with this Part.*

On a balance of probabilities and for the reasons stated below, I dismiss the tenant's application for an illegal rent increase of \$3,150.00, without leave to reapply.

I find that the tenant agreed to pay rent increases throughout the period of this tenancy. The tenant's rent started at \$1,200.00 and was increased to \$1,400.00 over time. The final rent increase from \$1,400.00 to \$1,925.00, was part of a negotiation between the tenant, who was looking for another place to live, and the landlords, who wanted to rent the unit for a higher amount of \$2,000.00 to new tenants. The landlords provided copies of messages between the parties from August 2018, where the tenant provides higher rent ranges based on her research of other similar units in the area, and agrees to pay a higher rent of \$1,925.00 to the landlords. The tenant did not dispute the content of these messages, nor did she dispute receiving them from the landlords. I find that the tenant agreed to a rent increase in writing, using the primary method of communication between the parties, messaging, to pay a higher amount of rent. I also find that the tenant did not file any dispute of the rent increase from August 1, 2018, when she claimed it was increased, until February 16, 2019, approximately 6.5 months later. The tenant filed this application after she moved out on February 4, 2019

and at the same time that she was filing her application to obtain a return of her security deposit. I find that the tenant failed to provide sufficient proof that she was under duress or forced by the landlords to pay a higher amount of rent.

### Security Deposit

Section 38 of the *Act* requires the landlords to either return the tenant's security deposit or file for dispute resolution for authorization to retain the deposit, within 15 days after the later of the end of a tenancy and the tenant's provision of a forwarding address in writing. If that does not occur, the landlords are required to pay a monetary award, pursuant to section 38(6)(b) of the *Act*, equivalent to double the value of the deposit. However, this provision does not apply if the landlords have obtained the tenant's written authorization to retain all or a portion of the deposit to offset damages or losses arising out of the tenancy (section 38(4)(a)) or an amount that the Director has previously ordered the tenant to pay to the landlords, which remain unpaid at the end of the tenancy (section 38(3)(b)).

I make the following findings based on a balance of probabilities. The tenancy ended on February 4, 2019. The tenant provided a written forwarding address to the landlords by way of a letter on February 6, 2019. The tenant did not give the landlords written permission to retain any amount from her security deposit. The landlords did not return the full deposit to the tenant. The landlords did not file an application to claim against the deposit. The landlords' right to claim against the deposit for damages was extinguished for failure to complete a move-out condition inspection report.

The landlords continue to hold \$350.00 which is a portion of the tenant's security deposit. No interest is payable on the tenant's security deposit during this tenancy.

Therefore, as per section 38 of the *Act* and Residential Tenancy Policy Guideline 17, I find that the tenant is entitled to receive double the value of her security deposit of \$650.00, totalling \$1,300.00, minus the \$300.00 portion returned to the tenant and the \$60.00 that she agreed to pay for moving expenses. Since the tenant did not give written permission for the landlords to keep the \$60.00 from the outset, this portion must also be doubled before it is deducted from the balance owing. I find that the tenant is entitled to a balance of \$940.00 from the landlords.

### Conclusion

I issue a monetary order in the tenant's favour in the amount of \$940.00 against the landlords. The landlords must be served with this Order as soon as possible. Should

the landlords 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.

The remainder of the tenant's application is dismissed without leave to reapply.

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 06, 2019

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Residential Tenancy Branch