



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDCT, MNSD

### Introduction

This teleconference hearing was scheduled in response to an application by the Tenant under the *Residential Tenancy Act* (the “Act”) for the return of the security deposit and/or pet damage deposit. The initial application was filed on March 26, 2019 and on April 13, 2019 the Tenant filed an amendment to add an additional claim for monetary compensation.

The Tenant was present for the teleconference hearing as was the Landlord and a friend (the “Landlord”). The Landlord confirmed receipt of the Notice of Dispute Resolution Proceeding package, a copy of the Tenant’s evidence, and a copy of the amendment to the application. The Tenant confirmed receipt of the Landlord’s evidence. Neither party brought up any issues regarding service during the hearing.

The parties were affirmed to be truthful in their testimony and were provided with the opportunity to present evidence, make submissions and question the other party.

### Issues to be Decided

Is the Tenant entitled to monetary compensation?

Is the Tenant entitled to the return of the security deposit?

### Background and Evidence

While I have considered the relevant documentary evidence and testimony of both parties, not all details of the submissions are reproduced here.

The parties were not in agreement as to the details of the tenancy. The Landlord testified that the tenancy began on December 1, 2017 and the Tenant moved out around January 1, 2019. He stated that monthly rent was \$1,650.00.

The Tenant testified that she moved in on November 22, 2017 and moved out on December 31, 2018. She stated that monthly rent was \$1,625.00.

The parties agreed that the Tenant paid \$812.00 for a security deposit and \$250.00 for a pet damage deposit. They were also in agreement that no move-in or move-out inspection was completed, and that the Tenant did not agreed to any deductions from her deposits at the end of the tenancy. They also agreed that the Tenant provided her forwarding address around March 1, 2019.

The Tenant stated that she received a cheque from the Landlord in the amount of \$650.00 and provided photos of the cheque and envelope into evidence which show it was sent on March 4, 2019. She has applied for \$1,474.00 which is double the deposits minus \$650.00 that has already been returned.

The Landlord agreed that he returned \$650.00 around March 4, 2019 and stated that \$412.00 was withheld for cleaning due to the poor condition of the rental unit at the end of the tenancy. The Landlord submitted photos of the rental unit into evidence.

The Tenant has also applied for \$2,692.13 as compensation for clothes, sheets and towels that were damaged during the tenancy due to an issue with the washing machine.

The Tenant provided a Monetary Order Worksheet that outlines the 27 items that were damaged and the cost of replacement. The Tenant submitted that she found the items online or from calling the store and the replacement cost is the cost of purchasing the items new. She stated that the items were 2-3 years old when damaged. The Tenant also submitted photos of some of the damaged clothing and items as well as information showing the cost of the items online.

The Tenant stated that around November 2017 she first noticed that her clothing was getting damaged in the washing machine at the rental unit, first from her clothes getting bleached and then being ripped after coming out of the washing machine. However, she stated that this occurred periodically at first such that sometimes her clothes would be fine and other times some would get damaged. She stated that by March 2018 she had

enough and around March 31, 2018 she had permission from the Landlord to purchase a new washing machine and deduct the cost off of her rent. The Tenant stated that prior to that she had begun taking her washing to a laundromat.

The Tenant testified that around June 2018 the rental unit was for sale and the new washing machine still had not been installed. The Tenant stated that the realtor came over and noted that the washing machine would not add any value to the home if installed. The Tenant stated that she called the Landlord to ask him whether he wanted it installed and he told her to return it instead.

The Tenant submitted a copy of a text message exchange with the Landlord dated November 29, 2017. In the text the Tenant informs the Landlord that her clothing was bleached in the washing machine. It is discussed that perhaps the previous tenant had left some bleach in the machine.

In a text message dated March 16, 2018, the Tenant notifies the Landlord that the washing machine caused rips in some of her clothing/towels. The Tenant further states in the text messages that she has been going to the laundromat as she didn't want to complain. The Landlord responded by text stating that he would get a new washing machine and the Tenant agreed and told him there was no rush as she wanted the washer to be a good price.

On March 27, 2018 the Landlord texts the Tenant with a photo of a washer that he will purchase when back in town in two weeks. The Tenant responds that she can get it with the help of a friend. The Landlord confirms that the Tenant may purchase the washer and reduce the amount from her next rent payment. In a text message on March 31, 2018 the Tenant and Landlord agree that the Tenant will purchase a new washing machine and send the Landlord the receipt.

The Landlord stated that the Tenant had told him of the concern with clothes being ripped and he had no issues with purchasing a new washing machine. He stated that they agreed that the Tenant would buy a new one and he would reimburse her. The Landlord stated that the Tenant told him she purchased the new machine but he never saw the washing machine and was never provided a receipt despite requests for a copy of the receipt.

The Landlord stated that he never told the Tenant to return the new washing machine, but that she did this on her own and sent him the money, although he had still never seen the receipt. The Landlord questioned why the Tenant would keep using the washing machine if it was damaging her clothes.

### Analysis

Regarding the Tenant's claim for the return of the security deposit and pet damage deposit, I refer to Section 38(1) of the *Act* which states the following:

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.

I accept the testimony of the parties that the tenancy ended on December 31, 2018 or January 1, 2019 and that the Tenant's forwarding address was provided on March 1, 2019. Therefore, I find that the Landlord had 15 days from March 1, 2019 to return the deposits or file a claim against them.

While Section 38(4) of the *Act* states that a landlord may retain an amount that the tenant agreed to in writing, both parties were in agreement that this did not occur. I also have no evidence before me that the Landlord filed an Application for Dispute Resolution to claim for damages or had an order from the Residential Tenancy Branch to retain an amount from the deposits.

Therefore, I find that the Landlord was not in compliance with Section 38(1) of the *Act* and had no reason under the *Act* to retain the deposits. As such, I find that Section 38(6) of the *Act* applies as follows:

- (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.

Therefore, I find that the Tenant is entitled to a Monetary Order in the amount of \$1,474.00, which is double the deposits minus the amount of \$650.00 that was already returned.

Regarding the Tenant's claim for monetary compensation for loss, I refer to Section 7 of the *Act* which states the following:

- 7 (1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.
- (2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

*Residential Tenancy Policy Guideline 16: Compensation for Damage or Loss* provides further clarification for determining if compensation is due through a four-part test as follows:

- a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
- loss or damage has resulted from this non-compliance;
- the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
- the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

Based on the testimony and evidence of both parties, I am not satisfied that the Tenant has established that the Landlord was in breach of the *Act*, *Regulation* and/or tenancy agreement and that she experienced a loss from that breach. While a landlord has a duty to repair and maintain the rental unit pursuant to Section 32 of the *Act*, in this matter I find that the Landlord took reasonable steps to respond to the issue with the washing machine once notified. It seems that the issue with the washing machine occurred through no fault of the Landlord or Tenant and that once notified the Landlord provided permission for the Tenant to purchase a new washing machine.

I also note that a party claiming a loss has a duty to take reasonable steps to mitigate their losses. By using the washing machine from November 2017 until March 2018, despite damage to clothing, bedding and towels, I do not find that the Tenant took reasonable steps to minimize any potential losses. While the Tenant notified the Landlord of an issue with bleach at the start of the tenancy, it seems that this was an isolated incident with no discussion about needing to repair or replace the washing machine at that time. Once the Tenant notified the Landlord of the ripping issue in March 2018, the Landlord immediately agreed to replace the washing machine.

I also note that I am not satisfied that the Tenant proved the value of her loss, as she provided the cost to purchase the damaged items new and did not account for the age of the items at the time they were damaged. I also find I have insufficient evidence regarding discussions about installing the washing machine or the decision to return the washing machine. As such, I am not clear as to why the washing machine was not installed immediately after purchase or whether or not the Landlord advised the Tenant to return the washing machine. Accordingly, I am not satisfied that the Tenant has met the burden of proof in establishing that the Landlord breached the *Act* by not repairing or maintaining the rental unit.

Therefore, I decline to award any compensation related to damage from the washing machine. This claim is dismissed, without leave to reapply.

Conclusion

Pursuant to Sections 38 and 67 of the *Act*, I grant the Tenant a **Monetary Order** in the amount of **\$1,474.00** for the return of double the security deposit and pet damage deposit, not including the amount already returned. The Tenant is provided with this Order in the above terms and 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.

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: July 12, 2019

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Residential Tenancy Branch