



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDC, MNSD, FF

### Introduction

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

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

The tenant attended the hearing via conference call and provided undisputed testimony. The landlord did not attend or submit any documentary evidence. The tenant stated that the landlord was served with the notice of hearing package and the submitted documentary evidence via Canada Post Registered Mail on August 30, 2019 and has provided a copy of the Canada Post Customer Receipt as confirmation. The tenant stated that the package was returned by Canada Post as "unclaimed".

I accept the undisputed testimony of the tenant and find that the landlord was properly served as per sections 88 and 89 of the Act. Although the landlord did not attend, I find that the landlord is deemed served as per section 90 of the Act.

The tenant stated that the amendment filed was not served to the landlord. As such, the amendment application is dismissed and the hearing shall proceed based upon the original application filed.

### Issue(s) to be Decided

Is the tenant entitled to a monetary order for money owed or compensation, return of the security deposit and recovery of the filing fee?

### Background and Evidence

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 / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

This tenancy began on February 1, 2018 on a month-to-month basis as per the submitted copy of the signed tenancy agreement dated January 31, 2018. The monthly rent is \$1,200.00 payable on the 1<sup>st</sup> day of each month. A security deposit of \$437.50 was paid.

The tenant seeks a clarified monetary claim of \$1,148.98 which consists of:

\$100.00	Filing Fee
\$137.55	Moving
\$437.50	Security Deposit
\$425.00	Rent for new tenancy
\$11.43	Canada Post Registered Mail
\$150.00	moving/security

The tenant states that due to the landlord's actions in threatening him, he had to vacate the rental unit by giving notice for August 6, 2019. The tenant stated that his forwarding address in writing was served to the landlord on August 22, 2019 in a letter.

The tenant seeks recovery of moving costs, return of the security deposit, rent for August (remaining portion), Canada Post Registered Mail cost and security for moving.

### Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. 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 of the *Act* 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.

In this case, the tenant provided undisputed testimony that he gave notice to end the tenancy on August 6, 2019 for August 6, 2019 when he vacated the rental unit. A review of the signed tenancy agreement dated January 31, 2018 shows that this is a month-to-month tenancy.

Section 45 of the Residential Tenancy Act, Tenant's Notice states in part,

A tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that is not earlier than one month after the date the landlord receives the notice, and is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

On this basis, I find that the tenant's claim for the following to be without merit:

\$137.55	Moving
\$425.00	Rent for new tenancy
\$150.00	moving/security

The tenant stated during the hearing that when asked on what basis is the tenant entitled to these claims from the landlord, the tenant stated, "I don't know". I find that the tenant provided no basis in which he is entitled to compensation for these claims. These portions of the tenant's claims are dismissed.

Section 38 of the Act requires the landlord to either return all of a tenant's security and/or pet damage deposit(s) or file for dispute resolution for authorization to retain the security and/or pet damage deposit(s) within 15 days of the end of a tenancy or a tenant's provision of a forwarding address in writing. If that does not occur, the landlord is required to pay a monetary award pursuant to subsection 38(6) of the Act equivalent to the value of the security and/or pet damage deposit(s).

In this case, the tenant has provided undisputed testimony that the tenancy ended on August 6, 2019 and that a \$437.50 security deposit was paid. The tenant stated that his forwarding address in writing requesting the return of the security deposit was served to the landlord in a letter on August 22, 2019. The tenant stated as of the date of this hearing the landlord has failed to return it and the tenant is not aware of any order authorizing the landlord to retain it. As such, I find that the landlord has failed to comply

with section 38 (1) of the Act. The tenant is entitled to recovery of the \$437.50 security deposit. I also find that the landlord having failed to comply with section 38 (1) is subject to section 38 (6) and is liable to pay an amount equal to the \$437.50 security deposit to the tenant.

On the tenant's claim for \$11.43 for recovery of Canada Post Registered Mail costs, I find that the tenant has failed. Section 72 of the Act addresses **Director's orders: fees and monetary order**. With the exception of the filing fee for an application for dispute resolution, the Act does not provide for the award of costs associated with litigation to either party to a dispute. Accordingly, the Landlord's claim for recovery of litigation costs (postage) is dismissed.

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

### Conclusion

The tenant is granted a monetary order for \$975.00.

This order must be served upon the landlord. Should the landlord fail to comply with this order, the 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: November 05, 2019

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Residential Tenancy Branch