



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNSD, MNDCT, FFT

### Introduction

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

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

This matter was adjourned from January 7, 2020 to today's date by the request of the parties. The landlord advised at that time she had extensive documentation that she wished to rely on and that an adjournment was necessary for her to supply it to the tenant and the Branch. Only the tenant appeared at the hearing. The tenant advised that she did not receive any documentation from the landlord for this hearing.

The Branch also did not receive any documentation from the landlord for today's hearing. I am satisfied that the landlord was provided the Notice of Hearing for today's teleconference. The hearing proceeded and completed in the absence of the landlord. The tenant provided affirmed testimony and was provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. 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 order for compensation for damage or loss under the Act, regulation or tenancy agreement?

Is the tenant entitled to a monetary award equivalent to the amount of her pet damage and security deposits as a result of the landlord's failure to comply with the provisions of section 38 of the Act?

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

Background, Evidence

**The tenant's undisputed testimony** is as follows. The tenancy began on March 2, 2019 and ended on April 28, 2019. The tenant was obligated to pay \$1750.00 per month in rent in advance and at the outset of the tenancy the tenant paid a \$875.00 security deposit and \$125.00 pet deposit for a total of \$1000.00 in deposits. The tenant testified that the landlord returned some of her deposits but retained \$254.40 of it without her consent or an order from the Branch. No written condition inspection reports were conducted at move in or move out.

The tenant testified that the landlord withheld information that the property was deemed a "nuisance property" by the municipality and that the previous long term tenants moved out because of the nuisance tenants living in the basement. The tenant testified that the landlord told her it was as nuisance property a week after the tenant moved in. The tenant testified that the tenants were abusive, threatening and dangerous. The tenant testified that in her short time in the home she had to call the police six times and the Ministry of Child and Family two times for child abuse. The tenant testified that the living conditions were so bad that her own daughter has suffered from post traumatic stress disorder as a result.

The tenant testified that the landlord promised her a \$500.00 rebate on the first months rent as the unit was dirty. The tenant testified that she had to pay \$6.00 to remove garbage to the dump as the downstairs tenants left garbage everywhere. The tenant testified that the downstairs tenants stole her mail and she was forced to have her mail forwarded at a cost of \$114.66. The tenant testified that she also is seeking the return of her two months rent for living in such a horrible living situation.

The tenant is applying for the following:

1.	Security Deposit	\$254.40
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2.	Moving Costs	1080.00
3.	Garbage	6.00
4.	Move In Cleaning	500.00
5.	Return of March and April Rent	3000.00
6.	Mail Transfer	114.66
7.	Filing fee	\$100.00
	Total	<b>\$5055.06</b>

### Analysis

The principal aspects of the tenant's claim and my findings around each are set out below.

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 provide **sufficient evidence of the following four factors**; the existence of the damage/loss, that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party, the applicant must also show that they followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed, and that if that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

Section 38 of the *Act* addresses the security and pet deposit as follows:

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.**

As the landlord has not filed for dispute resolution or returned the deposit as stated above, I must award the tenant the return of double the security and pet deposit. The tenant is entitled to  $\$1000.00 \times 2 = \$2000.00 - \$746.60 .00$  previously returned for an entitlement of \$1254.40

Moving Costs – \$1080.00

This is a cost the tenant would have incurred at the end of the tenancy and therefore is not entitled to the recovery of this claim, accordingly; I dismiss this portion of their application.

Cleaning - \$500.00, Rent Return of \$3000.00, Mail Transfer fee \$114.66, and Garbage \$6.00.

The tenant provided documentation that supports her position that the landlord agreed *in writing* to reimburse her these costs. In addition, the tenant provided sufficient evidence to show that the landlord had not been truthful and forthright at the outset of the tenancy by renting her a unit that was deemed a nuisance property and that was not sufficiently clean, accordingly; the tenant is entitled to all of the claims as noted in this section.

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

### Conclusion

In summary, the tenant has been successful in the following claims:

Security Deposit	\$1254.40
Garbage	\$ 6.00
Cleaning Rebate	\$500.00

March and April Rent	\$3000.00
Mail Transfer fee	\$ 114.66
Filing Fee	\$ 100.00
<b>Total:</b>	<b>\$4975.06</b>

The tenant has established a claim for \$4975.06. I grant the tenant an order under section 67 for the balance due of \$4975.06. 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: March 30, 2020

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Residential Tenancy Branch