



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNDCT FFT MNSD

### Introduction

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

- A monetary award for damages and loss pursuant to section 67;
- A return of the security and pet damage deposit for this tenancy pursuant to section 38; and
- Authorization to recover their filing fee from the landlord pursuant to section 72.

The landlord did not attend this hearing which lasted approximately 15 minutes. The teleconference line remained open for the duration of the hearing and the Notice of Hearing was confirmed to contain the correct hearing information. The tenant JD (the "tenant") attended on behalf of both applicants and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

The tenant testified that they served the landlord with their notice of application and evidence by registered mail sent on November 29, 2019. The tenant provided a valid Canada Post tracking receipt as evidence of service. Based on the evidence I find that the landlord is deemed served with the tenant's materials on December 4, 2019, five days after mailing, in accordance with sections 88, 89 and 90 of the *Act*.

### Issue(s) to be Decided

Are the tenants entitled to a monetary award as claimed?

Are the tenants entitled to a return of their deposits for this tenancy?

Are the tenants entitled to recover their filing fee from the landlord?

### Background and Evidence

The tenant provided undisputed evidence on the following facts. The monthly rent for this periodic tenancy was \$1,200.00 payable on the first of each month. Rent was paid through to September 30, 2019. A security deposit of \$600.00 and pet damage deposit of \$200.00 were paid at the start of the tenancy and are still held by the landlord. No condition inspection report was prepared at anytime for this tenancy.

The tenant gave evidence that though they paid rent through to the end of September, the landlord entered the suite without proper notice and the tenant vacated the rental unit on September 18, 2019 as they did not feel safe in the suite. The tenants seek a monetary award in the amount of \$420.00 the pro-rated amount for the overpaid rent for the month of September.

The tenants provided the landlord with a forwarding address in writing prior to the end of the tenancy on August 27, 2019. The tenants agreed in writing that the landlord may retain \$100.00 of the deposit for this tenancy for carpet cleaning but did not agree to any other deductions. The tenants seek a return of the security and pet damage deposit for this tenancy.

### Analysis

Section 38 of the *Act* requires the landlord to either return all of a tenant's security deposit or file for dispute resolution for authorization to retain a security deposit 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 section 38(6) of the *Act* equivalent to the value of the security deposit. However, this provision does not apply if the landlord has obtained the tenant's written authorization to retain all or a portion of the security deposit to offset damages or losses arising out of the tenancy.

I accept the evidence of the tenants that they had provided a forwarding address prior to the end of the tenancy and that the tenancy ended September 30, 2019. I accept the evidence that the tenant authorized a deduction of \$100.00 from the deposits but did not consent in writing to any other deductions.

Furthermore, I accept the evidence that no condition inspection report was prepared at any time during the tenancy. Section 36 of the *Act* provides that the right of a landlord to claim against a security and pet damage deposit is extinguished if they do not comply

with the requirements of section 35 in offering the tenant 2 opportunities for an inspection and completing a condition inspection report.

Based on the evidence before me, I find that the landlord has neither applied for dispute resolution nor returned the tenant's security and pet damage deposit in full within 15 days of receiving the tenant's forwarding address. I accept the tenant's evidence that they have not waived their right to obtain a payment pursuant to section 38 of the *Act* as a result of the landlord's failure to abide by the provisions of that section of the *Act*. Under these circumstances and in accordance with section 38(6) of the *Act*, I find that the tenant is entitled to an \$1,400.00 Monetary Order, double the value of the \$500.00 portion of the security deposit withheld by the landlord without the tenant's written consent and double the pet damage deposit for this tenancy.

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.

I find that there is insufficient evidence that the early end of the tenancy was due to a violation on the part of the landlord such that it would give rise to a monetary award. I find the testimony of the tenant and the copies of correspondence between the parties to be insufficient to meet the evidentiary burden. Based on the totality of the evidence I find there is insufficient support for the tenant's submission that there was a loss suffered due to the landlord and consequently I dismiss this portion of the application.

As the tenants were successful in their application for the most part I allow the tenants to recover their filing fee from the landlord.

### Conclusion

I issue a Monetary Order in the tenants' favour in the amount of \$1,500.00 against the landlord, allowing for the return of double the security and pet damage deposit for this tenancy less the agreed upon deduction and filing fees. The tenants are provided with a Monetary 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.

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: April 17, 2020

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Residential Tenancy Branch