



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNDCT, MNSD, MNDL-S, FFL

### Introduction

This hearing dealt with the landlord'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*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement, pursuant to section 67;
- authorization to retain the tenant's security deposit in partial satisfaction of the monetary order requested, pursuant to section 38; and
- authorization to recover the filing fee for its application from the tenant, pursuant to section 72.

This hearing also dealt with the tenant's cross-application pursuant to the *Act* for:

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

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. The tenant acknowledged receipt of evidence submitted by the landlord. The tenant did not submit any documentation for this hearing. 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.

### Preliminary Issue

At the 45 minute mark of the 60 minute hearing the tenant requested an adjournment. The tenants advocate continually referred to COVID-19, however; the advocate did not provide the basis as to why an adjournment was warranted. Counsel for the landlord was at a loss as to how to respond as the parties had gone through their applications and was confused as to what reason and what purpose an adjournment would provide.

Counsel submitted that the matter had been heard and that a decision should be issued without the need of an adjournment. Despite the advocate being given ample opportunity to provide the basis of the adjournment, he failed to do so. Based on the insufficient at times very confusing comments of the advocate, I did not grant the adjournment and the hearing completed as scheduled.

#### Issue to be Decided

Is the landlord entitled to a monetary order as compensation for loss or damage under the Act, regulation or tenancy agreement?

Is the landlord entitled to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary award requested?

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

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

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

#### Background, Evidence

The landlord's testimony is as follows. The tenancy began on September 1, 2017 and ended on November 1, 2019. The tenant was obligated to pay \$850.00 per month in rent in advance and at the outset of the tenancy the tenant paid a \$425.00 security deposit. Written condition inspection reports were not conducted at move in or move out. PD testified that the unit was 14 years old when the tenant moved out. PD testified that the unit was left dirty and damaged.

BD testified that the tenant was given three months notice that she would be moving into the unit despite the law only requiring two months. BD testified that she wanted to have her own space and that the subject unit was perfect for her needs. BD testified that the unit was uninhabitable when the tenant moved out requiring significant repairs. BD testified that she moved in early to mid December 2019 and has resided there since. BD testified that the notice issued to end the tenancy was issued in good faith.

Counsel for the landlord made the following submissions. Counsel submits that the tenant did not provide their forwarding address to the landlord until they served him with the Notice of Dispute Documents. Counsel submits that as the tenant did not provide the forwarding address in writing prior to filing an application, the doubling provision under section 38 doesn't apply. Counsel submits that the tenant cut off all communication with the landlord after they moved out. Counsel submits that they made numerous attempts to call the tenant but were ignored. Counsel submits that emails

were sent to the tenant about the damages including evidence for this hearing as it was their preferred method of communication. Counsel submits that the landlord incurred significant costs to repair the unit in the amount of \$4160.28. Counsel submits that the landlord conducted repairs to floors and cabinets. Counsel submits that the landlord was very generous in that they did not pursue many other claims and feel that amount is reasonable. Counsel further submits that the amount as claimed should be awarded along with the filing fee of \$100.00 for a total award to the landlord of \$4160.28.

The tenants' advocate made the following submissions. The advocate submits that since the landlord didn't return the deposit within fifteen days its automatically doubled as "per the law". The advocate submits that the onus is on the landlord to display good faith, but they have not done that. The advocate submits that the landlord did not conduct inspections of the unit at move in and move out.

The advocate submits that the tenant should be entitled to the return of double the security deposit as well be compensated for twelve months of rent. The advocate submits that the landlord issued a Two Month Notice to End Tenancy for Landlords Use of Property on August 1, 2019 on the basis that his daughter was going to move in. The advocate submits that the tenant moved out on November 1, 2019. The advocate submits that the landlord conducted a full renovation to the unit and therefore good faith was not exercised. The tenant seeks a monetary order of \$11,305.00.

### Analysis

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 arguments are reproduced here. The principal aspects of each party'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.

I first address the landlords claim for damages of \$4160.28. Section 23 of the Act addresses the issue before me as follows:

**Condition inspection: start of tenancy or new pet**

**23** (1)The landlord and tenant together must inspect the condition of the rental unit on the day the tenant is entitled to possession of the rental unit or on another mutually agreed day.

(2)The landlord and tenant together must inspect the condition of the rental unit on or before the day the tenant starts keeping a pet or on another mutually agreed day, if

(a)the landlord permits the tenant to keep a pet on the residential property after the start of a tenancy, and

(b)a previous inspection was not completed under subsection (1).

(3)The landlord must offer the tenant at least 2 opportunities, as prescribed, for the inspection.

(4)The landlord must complete a condition inspection report in accordance with the regulations.

(5)Both the landlord and tenant must sign the condition inspection report and the landlord must give the tenant a copy of that report in accordance with the regulations.

**(6)The landlord must make the inspection and complete and sign the report without the tenant if**

**(a)the landlord has complied with subsection (3), and**

**(b)the tenant does not participate on either occasion.**

The landlord did not provide sufficient evidence that any attempts were made to conduct an inspection at move in or move out. In addition, the photos at the end of the tenancy are very limited in their usefulness and do not fully support the claims of damages as made. Although the landlord submitted some receipts of work, they were vague in the nature and scope of the undertaking. It was explained in great detail to the landlord the vital and useful nature of the inspection report. Without the condition inspection report or any other supporting documentation, I am unable to ascertain the changes from the

start of tenancy to the end of tenancy, if any. The landlord has not provided sufficient evidence to support this portion of his claim and I therefore dismiss this portion of their application.

The landlord's application is dismissed in its entirety without leave to reapply.

I now address the tenants claim for twelve months compensation pursuant to section 51 of the Act.

Section 51(1) of the Act requires that a landlord, who gives a notice under section 49, including the form of notice that is the subject of this application, must pay the tenant an amount equivalent to one month's rent. Section 51 (2) of the Act states as follows:

- (2) In addition to the amount payable under subsection (1), if
  - (a) steps have not been taken to accomplish the stated purpose for ending the tenancy under section 49 within a reasonable period after the effective date of the notice, or
  - (b) the rental unit is not used for that stated purpose for at least 6 months beginning within a reasonable period after the effective date of the notice,the landlord, or the purchaser, as applicable under section 49, must pay the tenant an amount that is the equivalent of twelve times the monthly rent payable under the tenancy agreement.

The applicant seeks payment of compensation in the amount of twelve times the monthly rent under the tenancy agreement pursuant to the quoted section of the Act because the property was not used for the stated purpose for ending the tenancy. BD gave clear, concise and credible testimony that she did in fact move in within a reasonable time after the unit had been repaired and cleaned to her standards. BD testified that the tenants moved out on November 1, 2019 and that she moved in early to mid-December 2019. The tenant did not provide any documentation of his allegation that the landlords daughter wasn't living in the unit. I find that the landlord did exercise good faith and that the stated purpose for ending the tenancy was done in a reasonable time, accordingly; I dismiss this portion of the tenants application.

The tenant has requested the return of double the security deposit.

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.

Despite the advocates belief that “its automatically doubled after 15 days”, section 38 of the Act clearly outlines the responsibility of the tenant to provide their forwarding address in writing. The first and only time the tenant provided their forwarding address was when they served the landlord notice of their application; as a result, the doubling provision does not apply. However, I do find that as the landlord has not been successful in their application, they are to return the \$425.00 security deposit to the tenant.

### Conclusion

The tenant has established a claim for \$425.00 I grant the tenant an order under section 67 for the balance due of \$425.00. This order may be filed in the Small Claims Court and enforced as an order of that Court.

The landlord’s application is dismissed in its entirety without the 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: May 08, 2020

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Residential Tenancy Branch