



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNSD MNDC FF

### Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution. A hearing by telephone conference was held on July 2, 2018. The Tenant applied for multiple remedies, as follows, pursuant to the *Residential Tenancy Act* (the *Act*):

- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement, pursuant to section 67;
- a monetary order for return of the security or pet deposit; and,
- recovery of the filing fee.

The Tenant attended the hearing. However, the Landlord did not attend the hearing. The Tenant testified that she sent a copy of the Notice of Hearing along with supporting documentary evidence to the Landlord by registered mail on March 5, 2020. Proof of mailing was provided. Pursuant to sections 89 and 90 of the *Act*, documents served in this manner are deemed to be received 5 days later. I find the Landlord is deemed to have received this package on March 10, 2020.

The Tenant was provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Issues to be Decided

1. Is the Tenant entitled to an order that the Landlord return all or part of the security deposit or pet damage deposit?
2. Is the Tenant entitled to compensation for loss or money owed?

### Background and Evidence

The Tenant provided a copy of the tenancy agreement into evidence, which shows that monthly rent was set at \$1,000.00 per month, and was due on the first of the month. The Tenant moved in on February 1, 2019, and moved out at the end of January 2020, at the end of her fixed term tenancy agreement. The Tenant stated that she paid a security deposit of \$500.00, and a pet deposit of \$250.00 as per the tenancy agreement.

The Tenant stated that on January 4, 2020, she went to the Landlord's unit and paid her rent, at which point the Landlord stated that her "tenancy was up", and that she had to move out. The Tenant stated she felt uncomfortable, and started looking for another place to live immediately. The Tenant stated that she moved out at the end of January 2020, only 26 days after being told she should move out.

The Tenant stated that she provided her forwarding address in writing on January 30, 2020, by putting a letter in the Landlord's mailbox. The Tenant stated that she provided a letter, in addition to the letter she uploaded into evidence, clearly stating her forwarding address in writing for the return of her deposits. The Tenant stated that the Landlord returned \$246.00, but kept the rest of her deposits. The Tenant stated she never gave permission for the Landlord to retain any of her deposits.

### Analysis

Based on all of the above, the evidence and testimony, and on a balance of probabilities, I find as follows:

First, I turn to the Tenant's request for the return of her security and pet deposit.

Section 38(1) of the *Act* requires a landlord to repay the security deposit or make an application for dispute resolution within 15 days after receipt of a tenant's forwarding address in writing or the end of the tenancy, whichever is later. When a landlord fails to do one of these two things, section 38(6) of the *Act* confirms the tenant is entitled to the return of double the security deposit.

In this case, the Tenant stated she moved out at the end of January 2020, which I find reflects the end of the tenancy. The Tenant stated that she requested the return of her deposits in writing by dropping a letter off in the Landlord's mailbox on January 30, 2020. Pursuant to section 88 and 90 of the Act, I find the Landlord is deemed to have received this letter and was served with the Tenant's forwarding address in writing on February 3, 2020, the 3<sup>rd</sup> day after it was left.

I note there is no evidence that the Tenant authorized any deductions from the security deposit. Pursuant to section 38(1) of the Act, the Landlord had 15 days from receipt of the forwarding address in writing (until February 18, 2020) to either repay the security deposit (**in full**) to the Tenant or make a claim against it by filing an application for dispute resolution. The Landlord did neither and only returned \$246.00 a few days later. Accordingly, I find the Tenant is entitled to recover double the amount of the security and pet deposit held by the Landlord ( $2 \times \$750.00 = \$1,500.00$ ) less the amount already returned (\$246.00) pursuant to section 38(6) of the Act. The Tenant is awarded \$1,254.00.

Next, I turn to the second part of the Tenant's application, which is for monetary compensation. A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in sections 7 and 67 of the Act. Accordingly, an applicant must prove the following:

1. That the other party violated the Act, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

In this instance, the burden of proof is on the Tenant to prove the existence of the damage/loss and that it stemmed directly from a violation of the Act, regulation, or tenancy agreement on the part of the Landlord. The Tenant must also provide evidence that can verify the value of the loss or damage. Finally it must be proven that the Tenant did everything possible to minimize the damage or losses that were incurred.

The Tenant is looking for one month's compensation because the Landlord did not give her a proper notice to end tenancy, and the Tenant feels she had to move through no fault of her own.

I accept that the Tenant was not given any notice to end tenancy in writing from the Landlord, and she was only verbally told she should move out. However, without a legal and valid notice in writing, issued by the Landlord, the Tenant was not required to move out. The Tenant could have remained in the rental unit. The Tenant also could have filed an application to dispute her verbal notice at that time, and stay in the unit, should she have wished to stay in the unit. Ultimately, the Tenant was not required to move out, without a valid notice to end tenancy from the Landlord, and I find when she moved out at the end of January 2020, she did so by choice. I find the Tenant has failed to sufficiently demonstrate why she should be entitled to one months' compensation in this case. The portion of the Tenant's application is dismissed, without leave.

As the Tenant was partly successful with her application, I award her the filing fee, pursuant to section 72 of the Act. In summary, I award the Tenant a monetary order in the amount of \$1,354.00

### Conclusion

The Tenant is granted a monetary order in the amount of **\$1,354.00**, as specified above. This order must be served on the Landlord. If the Landlord fails to comply with this order the Tenant may file the order in the Provincial Court (Small Claims) and be 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: July 06, 2020

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Residential Tenancy Branch