



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNSD, MNDCT, FFT

### Introduction

The tenant completed the Application for Dispute Resolution on September 20, 2020 (the “Application”) seeking return of the security deposit, and compensation for other monetary loss. Additionally, they applied for reimbursement of the Application filing fee.

The matter proceeded by way of a hearing pursuant to section 74(2) of the *Residential Tenancy Act* (the “Act”) on January 25, 2021. The parties met again in a reconvened hearing on February 3, 2021.

Both parties attended the conference call hearing. I explained the process and both parties had the opportunity to ask questions and present oral testimony during the hearing.

Both parties confirmed they received the prepared evidence of the other in advance of this hearing. On this basis, the hearing proceeded.

### Issue(s) to be Decided

Is the tenant entitled to the return of their security deposit, pursuant to section 38 of the *Act*?

Is the tenant entitled to compensation for monetary loss or other money owed, pursuant to section 67 of the *Act*?

### Background and Evidence

Both parties confirmed the basic terms of the tenancy agreement. A copy of the document was provided by the landlord in their evidence. The rent as of the time of the end of tenancy was \$1,743.73. The tenant paid a security deposit of \$800 on December 2, 2016.

An addendum forms part of the agreement, signed on December 2, 2016. Clause 2 of the Addendum states as follows:

The tenants understand that they must carry their own content & tenant liability insurance. The tenants agree that the owner and management company will not be responsible for any damage to their personal belongings.

The tenant notified the landlord of accumulated moisture in a carpet area of the rental unit at the end of July 2020. The landlord, in their prepared evidence, stated this was “an unspecified date in the last week of July 2020.” The landlord stated they followed up from the tenant’s notice with a visit from a plumber. In the hearing, the tenant stated they “talked about the end of tenancy” at this time, and “they confirmed that end of August can be the end of the tenancy.”

The tenant forwarded a notice to end the tenancy to the landlord on August 5, 2020. In an email, the tenant stated: “with [the leaking and water accumulation issue] my wife and I decided to move, so I [announce] that we will vacate the suite until end of August 2020.” The tenant inquired about mold inspection by the end of August 2020.

The final move-out inspection with both parties present occurred on August 31, 2020. This was after the tenant vacated the unit on August 27, 2020. At the meeting, the tenant presented their new address to the landlord. The document entitled ‘Inspection Report’ completed on August 31 contains the tenant’s forwarding address. The landlord provided this document in their evidence.

This document also bears the landlord’s notation describing damage: “professional cleaning cost, 5 days of Sep Rent, outstanding utilities.” The tenant’s signature is beside the statement “I agree to the following deductions from my . . . deposit”; following this ‘Security Deposit Deduction’ is shown to be “TBD [to be determined].”

In their Application the tenant claimed for the return of a \$350 portion of the security deposit. On their Application, they noted they vacated on August 25 because of the

water accumulation in the unit “the basement air was so smelly and moldy and we had to move sooner”. They stated the landlord charged the tenant until September 5, 2020, for \$250.

In their evidence the tenant included an image of a cheque in the amount of \$355 dated August 27, 2020. This is payment to their new landlord for the time period of August 27 – August 31, an early move into their next rental unit.

In regard to the end of tenancy, the landlord stated the end date, under the standard terms of a month-to-month agreement would properly be September 5<sup>th</sup>. This is where the tenant gave their notice on August 5, 2020 – that would be 30 days. The landlord made a payment to the tenant of \$109.08 on September 8, 2020. A copy of the cheque in the landlord’s evidence has the printed statement on the face of the cheque: “Refund damage deposit minus cleaning fee & 5 days of Sep Rent.” In their written statement the landlord stated this is not a matter of damage deposit return, and the amount deducted from the security deposit was mutually agreed upon, with the difference returned to the tenant within 15 days of the end of the tenancy.

From the landlord’s timeline they provided in their written submission comes the following:

- August 27: a plumber attended to the flooding in the unit to treat the unit with anti-fungal spray
- August 29: the tenant emailed to advised they were mostly out of the apartment and would be out the next day – according to the landlord the tenant “needed another day to clean” and then would return the key on August 31 to return possession of the rental unit
- August 31: the tenant and landlord attended the move out inspection meeting at the unit – There was agreement from the tenant for deduction from the deposit for professional cleaning, 5 days of September rent and any outstanding utilities

The landlord also made the submission that, had the tenant ensured proper tenant's insurance as specified in the Addendum, a temporary accommodation would likely have been provided in this situation where the tenant felt it necessary to immediately vacate.

The tenant also claims for monetary loss as a result of their having to dispose of some of their furniture due to mold. They sent images of the furniture damage. In the hearing they described having to dispose of many things in order to vacate. Their new landlord would not allow mold into their new place of residence.

To show the amount in question, the tenant provided a receipt for five separate pieces of furniture, totalling \$4,094.72. A separate receipt shows the purchase of another furniture piece for \$340.48. Added together, these items total \$4,435.20. On their Application, the tenant indicated they are requesting \$4,432.00.

The landlord's position on this portion of the tenant's claim is that tenant's insurance is in place for this reason. They provided in their submission: "remedies should have been sought against their tenant's insurance as was required under Section 2, page 1 of the addendum to their tenancy agreement." Additionally, the moisture in question was detected in the master bedroom, not the living room, so the tenant's claim for some furniture items not in that area seems out of place.

### Analysis

Under section 7 of the *Act*, a landlord or tenant who does not comply with the legislation or their tenancy agreement must compensate the other for damage or loss. Additionally, the party who claims compensation must do whatever is reasonable to minimize the damage or loss. Pursuant to section 67 of the *Act*, I shall determine the amount of compensation that is due, and order that the responsible party pay compensation to the other party if I determine that the claim is valid.

To be successful in a claim for compensation for damage or loss the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss; **and**
4. Steps taken, if any, to mitigate the damage or loss.

As shown on the cheque copy in their evidence, the tenant paid \$355 to their new landlord for their move. They claimed \$350 for this piece on their Application. They have incorrectly made the claim against the security deposit; therefore, I amend their Application to make this a claim for compensation of monetary loss.

The tenant in their submissions and the evidence provided has not shown that this loss results from a violation of the *Act* or the tenancy agreement by the landlord. It was the tenant's own choice to vacate early, and this was in advance of the agreed-upon end-of-

tenancy date of September 5. The landlord shall not bear the cost for this piece; therefore, I dismiss this portion of the tenant's claim, with no monetary award.

There is otherwise no impact on the security deposit. The landlord showed in their evidence that the tenant agreed to deductions from the deposit. The landlord sent the balance owing to the tenant within the required timeframe to do so.

The Addendum is clear that the tenant must carry their own content and tenant liability insurance. It specifies the tenant agrees that "the owner and management company will not be responsible for any damage to their personal belongings." The tenant neither presented that they had proper insurance in place; nor did they present that they were not aware or otherwise impeded from obtaining that insurance by the landlord.

The tenant has shown the value of replacement items; however, there is no breach of the *Act* or the tenancy agreement by the landlord here. As a result, the landlord shall bear no cost for these replacement items. I dismiss this portion of the tenant's claim, with no monetary award.

Because they were not successful in their claim, the tenant will not recover the Application filing fee.

### Conclusion

For the reasons above, the tenant's application is dismissed, without 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 *Act*.

Dated: January 25, 2021

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Residential Tenancy Branch