



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Urban Vision Housing Society  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      **MNDCT, MNSD**

### Introduction

This hearing dealt with an application by the tenant under the *Residential Tenancy Act* (the *Act*) for the following:

- An order for the landlord to return the security deposit pursuant to section 38;
- A monetary order for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement pursuant to section 67 of the *Act*;

The tenant NE attended on behalf of both tenants ("the tenant") and was given a full opportunity to be heard, to present affirmed testimony, make submissions, and call witnesses. I explained the hearing process and provided the tenant with an opportunity to ask questions. The tenants are referenced throughout in the singular.

The tenant provided affirmed testimony that they served the landlord with the Notice of Hearing and Application for Dispute Resolution by registered mail sent on January 21, 2021 to the landlord's business address; the documents are deemed received by the landlord under section 90 of the *Act* five days later, that is, on January 26, 2021.

The tenant provided the Canada Post Tracking Number in support of service. Pursuant to sections 89 and 90, I find the tenant served the landlord with the Notice of Hearing and Application for Dispute Resolution on January 26, 2021.

The landlord did not attend the hearing. I kept the teleconference line open from the scheduled time for the hearing for an additional ten minutes to allow the landlord the

opportunity to call. The teleconference system indicated only the tenant and I had called into the hearing. I confirmed the correct call-in number and participant code for the landlord were provided.

#### Issue(s) to be Decided

Is the tenant entitled to the following:

- An order for the landlord to return double the security deposit pursuant to section 38;
- A monetary order for damages or compensation pursuant to section 72;

#### - Background and Evidence

The tenant provided uncontradicted evidence as the landlord did not attend the hearing.

The tenant testified that the parties entered into a month to month tenancy agreement on May 1, 2018. At the beginning of the tenancy, the tenant provided a security deposit of \$337.50 which has not been returned to the tenant. At the end of the tenancy, monthly rent was \$750.00. The tenant has not authorized the landlord to retain any part of the security deposit. The tenant stated he was never provided with a copy of the agreement.

The tenant testified that on September 15, 2019 when he was in the hospital, the landlord removed his possessions from the unit without authorization. This effectively ended the tenancy without notice from either party. The tenant never moved back into the unit. The tenant stated that he had paid rent for the full month of September 2019 and requested reimbursement of one-half a month's rent, that is \$375.00.

The tenant testified he provided his forwarding address to the landlord by registered mail sent on January 11, 2021. The tenant provided the tracking number in support of service and provided a copy of the receipt.

The tenant submitted a Monetary Work Order in support of his application.

The tenant requested a monetary award of double the deposits for the landlord's failure to return the deposits within 15 days of the provision of the forwarding address. The total award of **\$1,050.00** is requested by the tenant calculated as follows:

ITEM	AMOUNT
Security deposit	\$337.50
Security deposit doubled	\$337.50
Rent (one-half month)	\$375.00
<b>Total Award Requested – Tenant</b>	<b>\$1,050.00</b>

### Analysis

#### *Security deposit*

Section 38 of the Act requires the landlord to either return the tenant's security deposit in full or file for dispute resolution for authorization to retain the deposit 15 days after the later of the end of a tenancy or upon receipt of the tenant's forwarding address in writing.

If that does not occur, the landlord must pay a monetary award, pursuant to section 38(6)(b) of the Act, equivalent to double the value the deposit. However, this provision does not apply if the landlord has obtained the tenant's written permission to keep all or a portion of the security deposit pursuant to section 38(4)(a).

I find that at no time has the landlord brought an application for dispute resolution claiming against the deposit for any damage to the rental unit pursuant to section 38(1)(d) of the Act. I find the tenant provided a deposit of \$1,950.00 and a pet deposit of \$1,950.00. I accept the tenant's evidence the parties agreed that \$861.00 could be retained by the landlord.

I accept the tenant's uncontradicted evidence they have not waived their right to obtain a payment pursuant to section 38 of the Act. I accept the tenant's credible testimony supported by documentary evidence and find the tenant served the landlord with the forwarding address as testified.

Under these circumstances and in accordance with sections 38(6) and 72 of the Act, I find that the tenant is entitled to return of the security deposit I also find the tenant is entitled to a monetary award of double the security deposit.

### *Claim for Rent*

Section 67 of the *Act* establishes that if damage or loss results from a tenancy agreement or the *Act*, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. The purpose of compensation is to put the claimant who suffered the damage or loss in the same position as if the damage or loss had not occurred. Therefore, the claimant bears the burden of proof to provide sufficient evidence to establish **all** of the following four points:

1. The existence of the damage or loss;
2. The damage or loss resulted directly from a violation – by the other party – of the *Act*, regulations, or tenancy agreement;
3. The actual monetary amount or value of the damage or loss; and
4. The claimant has done what is reasonable to mitigate or minimize the amount of the loss or damage claimed, pursuant to section 7(2) of the *Act*.

In this case, the onus is on the tenant to prove entitlement to a claim for a monetary award. The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed.

I accept the uncontradicted evidence of the tenant and find the facts as testified to be credible. I find the tenant has met the burden of proof that he was moved out of the unit by the landlord without authorization, thereby losing the benefit of half a month's rent. I find the landlord violated the agreement and Act by moving the tenant's possessions out of the unit without notice or permission. I find the tenant moved elsewhere and incurred the reasonable expense of rental costs in another location.

I therefore find the tenant is entitled to a monetary award for half a month's rent as claimed.

I grant the tenant a Monetary Order in the amount of \$1,050.00 against the landlord.

A summary of my award follows:

ITEM	AMOUNT
Security deposit	\$337.50

Security deposit doubled	\$337.50
Rent (one-half month)	\$375.00
<b>Total Monetary Order – Tenant</b>	<b>\$1,050.00</b>

Conclusion

I grant the tenant a monetary order pursuant to section 38 in the amount of **\$1,050.00**

The landlord is ordered to pay this sum forthwith. The landlord must be served with a copy of this order as soon as possible. Should the landlord fail to comply with this order, the 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: May 14, 2021

---

Residential Tenancy Branch