



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      **MNSD, MNDCT, FFT**

### 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*;
- An order requiring the landlord to reimburse the tenant for the filing fee pursuant to section 72.

The hearing was conducted by teleconference. The tenants ("the tenant") and the landlord attended. The hearing process was explained, and they had the opportunity to ask questions. The parties had the opportunity to make submissions, present documentary evidence, and call witnesses.

The parties confirmed they were not recording the hearing. They also confirmed the email addresses of the parties to which the Decision and any Order shall be sent.

No issues regarding service were raised. I find each party served the other in compliance with the *Act*.

*Preliminary Issue – Doubling*

I informed the parties of the provisions of section 38 of the *Act* which require that the security deposit is doubled if the landlord does not return the security deposit to the tenant within 15 days of the later of the end of the tenancy or the provision of the tenant's forwarding address in writing.

*Preliminary Issue – Claim for 12 Months' Rent as Compensation*

No submissions were made by the parties with respect to the tenant's proposed claim for compensation under section 51(2).

Issue(s) to be Decided

Is the tenant entitled to a doubling of the security deposit under section 38?

Is the tenant entitled to a monetary award and reimbursement of the filing fee?

Background and Evidence

The tenant testified that they were seeking a doubling of the security deposit under section 38 and compensation under section 67 of a portion of the last month's rent for leaving the unit before the effective date of the landlord's Two Month Notice.

The parties agreed as follows. The tenancy began January 31, 2020 for rent of \$1,500.00 with a security deposit of \$750.00 paid at the beginning. The landlord issued a Two Month Notice to End Tenancy for Landlord's Use dated October 31, 2021 and effective December 31, 2021. The tenant did not dispute the Notice. The Notice stated the landlord had to compensate the tenant an amount equal to one month's rent payable under the tenancy agreement which is required under the Act. The landlord paid compensation to the tenant in the amount of \$1,500.00.

On December 10, 2021 the tenant informed the landlord they were moving out early, on December 21, 2022. They moved out on that date and seek prorated reimbursement for the rent for the unoccupied days in December 2021. The tenant's email and the landlord's reply acknowledging the notice to vacate were submitted as evidence.

The parties agreed the tenant provided their forwarding address in writing on December 21, 2022.

The landlord returned the security deposit minus \$94.88 for repairs. The landlord did not bring an application for dispute resolution to keep the security deposit. The parties agreed the tenant did not authorize the landlord to keep this amount.

The landlord submitted condition inspection reports which were not in the RTB form on moving in and moving out. The landlord returned the sum of \$655.12 from the security deposit on January 1, 2022.

The tenant requested a doubling of the security deposit less the amount of the return as follows:

ITEM	AMOUNT
Security deposit	\$750.00
Security deposit doubling	\$750.00
(Less returned amount)	(\$655.12)
<b>TOTAL REQUESTED</b>	<b>\$844.88</b>

The tenant requested reimbursement of the filing fee of \$100.00 for a total Monetary Order of \$944.88.

The landlord stated the reduction of repairs was justified by the damage for which the tenant is responsible, an assertion which the tenant denied. The landlord requested the tenant's application be dismissed.

### Analysis

While I have turned my mind to the documentary evidence and the testimony of the tenant, not all details of the submissions and arguments are reproduced here. The relevant and important aspects of the claims and my findings are set out below.

### *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 of the security 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 security deposit for any damage to the rental unit pursuant to section 38(1)(d) of the *Act*.

I accept the tenant's evidence they have not waived their right to obtain a payment pursuant to section 38 of the *Act*.

I accept the tenant's evidence supported by a copy of the email that the tenant gave the landlord written notice of their forwarding address on December 21, 2022.

Under these circumstances and in accordance with sections 38(6) and 72 of the *Act*, I find that the tenant is entitled to a monetary order of doubling of the security deposit minus the amount returned by the tenant.

#### *One Month's Rent as Compensation*

The landlord must compensate the tenant in the amount of one month's rent under the *Act*. The tenant is not entitled to additional compensation and the tenant's application for pro-rated rent as they moved out before the end of the month of December 2021 is dismissed without leave to reapply.

#### *Filing Fee*

As the tenant is successful in the application, I award the tenant reimbursement of the filing fee under section 72.

#### *Summary*

I award the tenant a Monetary Order for the doubling of the security deposit less the amount returned for a total of **\$844.88**.

As the tenant has been successful in this matter the tenant is entitled to an award of \$100.00 for reimbursement of the filing fee. The total Monetary Order is **\$944.88**.

Conclusion

I grant the tenant a Monetary Order in the amount of **\$944.88** as described 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) to 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: August 26, 2022

---

Residential Tenancy Branch