



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNSD, MNDCT

### Introduction

Pursuant to section 58 of the *Residential Tenancy Act* (the Act), I was designated to hear an application regarding a tenancy. In this application for dispute resolution, the tenant filed on January 19, 2022 for:

- the return of part or all of the security deposit and/or pet damage deposit; and
- compensation for monetary loss or other money owed.

The hearing was attended by the tenant and a representative of the landlord (“the landlord”). Those present were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses; they were made aware of Residential Tenancy Branch Rule of Procedure 6.11 prohibiting recording dispute resolution hearings, and Rule 7.4 requiring evidence to be presented.

The parties confirmed they had received each other’s respective materials.

### Preliminary Matter

The tenant’s application indicated she was seeking the return of part or all of the security deposit and/or pet damage deposit, the amount requested was \$267.00, and the description of why it was being requested stated that the landlord’s agent had removed the deadbolt from the door before the final inspection, “and keys on counter were taken resulting in having to tow truck to dealer and cut key.”

The tenant said the request for \$267.00 did not relate to costs for towing and key cutting, and that the \$267.00 sought was related to the deposits. A previous decision has already dealt with the deposits; the file number is noted on the cover page of this decision. Therefore, I dismiss the tenant’s application for the return of part or all of the security deposit and/or pet damage deposit.

Issue to be Decided

Is the tenant entitled to compensation for monetary loss or other money owed?

Background and Evidence

The parties agreed on the following particulars regarding the tenancy. It began December 1, 2015 and ended October 31, 2021; the landlord was granted an order of possession in a previous decision, as noted on the cover page. Rent was due on the first of the month, and at the end of the tenancy, rent was \$600.00.

The landlord testified the tenancy agreement stated the security deposit was \$300.00, but the tenant paid a security deposit of \$283.50. The tenant testified the landlord had to pay her back \$33.00.

The previous decisions, noted on the cover page, determined that the parties agreed that \$600.00 in deposits were paid to the landlord at the start of the tenancy, which, given that rent was \$567.00, constituted a \$33.00 overpayment, which was awarded to the tenant.

The tenant then testified that in the hearing which resulted in her eviction, it was discovered that rent was \$567.00, but she had paid \$600.00 a month for the duration of the tenancy. A copy of the tenancy agreement is submitted as evidence; it states that rent is \$567.00.

The tenant testified that following that hearing she told the landlord she wanted to be compensated for the overpayment, and that the landlord sent the tenant a draft letter they wanted the tenant to sign. Submitted as evidence is an October 16, 2021 letter and draft settlement proposal, which states the tenant was overcharged \$2,038.00, which will be returned if listed conditions are met.

The tenant testified she is seeking to recover the \$2,038.00, as noted in her monetary claim.

The tenant testified that in one of the landlord's calculations, she refers to a rent increase, but that the tenant never received a rent increase.

The landlord referred me to the same October 16, 2021 letter and draft settlement, stating that it was only a draft describing their preliminary findings, and that having done further investigation, the landlord found that the tenant did not overpay her rent.

The landlord submitted that the draft settlement indicating that money was owed to the tenant was put together in a hurry as the tenant was pushing the landlord to pay her the amount thought to be owed to the tenant at that time.

The landlord testified that the former building manager would defer the payment of rent and pet damage deposits for people on income assistance, setting up a payment plan to cover the outstanding amounts. The landlord testified they were not able to have the building manager testify on the matter as he is deceased.

The landlord testified that the tenant had paid only half of her first month's rent, and submitted as evidence a copy of the December 2015 rent roll, which indicates the tenant's rent is \$567.00, and that the tenant paid \$283.50 for the security deposit, and \$283.50 in rent, for a combined amount of \$567.00.

The landlord testified that the tenant paid \$567.00 in rent for each of January and February 2016, and submitted rent rolls as evidence, showing the same.

The landlord provided a written submission stating that the tenant began paying \$23.00 a month in May 2016, which was a payment plan for the deferred December rent of \$283.50 and the deferred pet deposit of \$283.50, which would be 24 payments of \$23.00, equalling \$552.00 at the end of April 2018. The landlord submitted that with the additional \$23.00, the tenant was then paying \$590.00 per month.

The landlord submitted that in June 2017 the tenant began being charged \$10.00 for parking, as the tenant's boyfriend needed an extra stall because he was using the space to repair cars for others.

The landlord submits that their initial finding that rent was owed to the tenant is incorrect, and that there was no rent increase during the tenancy.

In her rebuttal, the tenant stated that the former building manager would not provide any leniency, and that the rent, of \$590.00, had to be paid on time. The tenant stated that as they were on income assistance, the rent was paid directly by the government, on time.

The tenant stated she never had a second parking space.

## Analysis

Section 67 of the Act and [Policy Guideline 16](#) provide that if damage or loss results from a party not complying with the Act, the regulations, or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party. In this case, the onus is on the tenant to prove entitlement to a claim for a monetary award.

Policy Guideline 16 states:

The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. In order to determine whether compensation is due, the arbitrator may determine whether:

- a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
- loss or damage has resulted from this non-compliance;
- the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
- the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

In support of her claim that the landlord owes her \$2,038.00 in rent overpayments, the tenant submitted as evidence a letter and draft settlement proposal from the landlord, which states the tenant was overcharged \$2,038.00. The tenant presented no other documentary evidence related to this claim.

In addition to her affirmed testimony, the landlord has presented supporting documentary evidence demonstrating that her initial finding that \$2,038.00 in rent overpayments were owed to the tenant is incorrect, and that on further investigation she determined that what were initially thought to be rent overpayments were a payment plan or charges for amounts payable.

The tenant has not provided a breakdown of the alleged rent overpayment owing, other than that provided by the landlord, which the landlord subsequently demonstrated is

incorrect. Additionally, the tenant has provided inconsistent testimony on how much rent was, first stating that she had paid \$600.00 a month for the duration of the tenancy, later stating that rent was \$590.00.

I find the landlord's version of whether the tenant overpaid rent to be more persuasive than that of the tenant's, as the landlord has provided consistent testimony throughout the hearing, and provided detailed testimony and documentary evidence to support her position that there were no rent overpayments made by the tenant.

As I find the tenant has failed to prove that damage or loss resulted from the landlord not complying with the Act, the regulations, or the tenancy agreement, as required by section 67 of the Act, I find she is not entitled to a monetary order for \$2,038.00.

### Conclusion

The tenant's claim is dismissed.

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: September 26, 2022

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Residential Tenancy Branch