



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNDC, MNSD, OLC, FF

### Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- authorization to obtain a return of all or a portion of the security deposit pursuant to section 38;
- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- an Order that the landlord comply with the *Act*, regulations or tenancy agreement; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

As both parties were in attendance I attempted to confirm service. While the landlord confirmed receipt of the tenant's application for dispute resolution both parties disputed receipt of the other's evidence. As the written evidence of both parties consists primarily of text messages and email correspondence between the parties I advised the parties that I would only consider those pieces of evidence included in the materials which both party could confirm having received on prior occasions. I have taken this approach after considering the guidance provided by Rule 3.17 of the Rules of Procedure.

### Issue(s) to be Decided

Is the tenant entitled to a monetary award equivalent to double the value of their security deposit as a result of the landlord's failure to comply with the provisions of section 38 of the *Act*?

Is the tenant entitled to recover the filing fee for this application from the landlord?

### Background and Evidence

The parties agreed on the following facts. This periodic tenancy began in February 2016 and ended April, 2017. The tenant paid a security deposit of \$750.00 at the start of the tenancy. A condition inspection report was prepared at the start of the tenancy and a copy was submitted into written evidence.

The tenant vacated the rental unit at the end of April. On May 2, 2017 the parties attended the rental unit to perform a move-out inspection and prepare a condition inspection report. The landlord testified that the rental unit was in such a messy state at that time, that they could not perform an inspection. The landlord said that no condition inspection report was prepared on that day and he arranged for commercial cleaners to attend the rental unit. The landlord said that after the cleaners had completed their work he attempted to contact the tenant to schedule another move-out inspection but she did not agree to participate. The landlord said that the rental unit was in a state of disrepair and he has incurred costs for cleaning and repairs.

The tenant testified that she did not give the landlord authorization to deduct or withhold any amount from the security deposit for this tenancy. The tenant gave her forwarding address in writing to the landlord by an email on May 17, 2017.

### Analysis

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 as per section 38(4)(a).

I accept the evidence of the parties that this tenancy ended on April 30, 2017 and the tenant gave the landlord her forwarding address in writing by email on May 17, 2017. The landlord did not return the security deposit to the tenant nor did he file an application for dispute resolution for authorization to retain the deposit within the 15 days provided under the *Act*.

The landlord testified that the rental unit was in a state of disrepair and that he incurred costs for cleaning and repairs. The landlord submitted into written evidence photographs of the unit and invoices for the repairs he claims were required. However, the landlord has not filed an application for authorization to recover these costs from the security deposit. The undisputed evidence of the parties is that the tenant has not authorized the landlord to deduct any portion of the security deposit.

If the landlord had concerns about the condition of the rental unit at the end of the tenancy and sought to recover his losses from the security deposit he ought to have filed an application for dispute resolution in accordance with the *Act*. A landlord cannot simply withhold the security deposit for a tenancy without following the appropriate legislative steps. I find that the landlord has failed to return the security deposit for this tenancy to the tenant without the tenant's authorization or filing an application to claim against the deposit.

Furthermore, the parties gave evidence that no condition inspection report was prepared at the end of the tenancy. The landlord claims that no report could have been prepared due to the condition of the rental unit at that time. I do not find the landlord's argument to be logical or convincing. The very purpose of a condition inspection report is to record the state of the rental unit at the time the report is prepared. If the rental unit was in a state of disrepair then that ought to have been recorded in the move-out condition inspection report. Even if the exact nature, full extent or monetary amount of the damages were unknown the landlord could have noted that the rental unit was damaged and in need of repairs or cleaning. Instead the landlord chose not to prepare any move-out condition inspection report.

Section 36 of the *Act* provides that the right of a landlord to claim against a security deposit is extinguished if he does not comply with the requirements of section 35 in offering the tenant 2 opportunities for an inspection and completing a condition inspection report.

The tenant attended the rental unit on May 2, 2017 with the landlord for the purpose of completing a move-out inspection and preparing an inspection report. The landlord chose not to complete a report at that time. I find that the tenant has complied with the requirements of section 36 of the *Act* by attending the rental unit on that date, and being prepared to participate in a move-out inspection. I do not find that the tenant was required to attend on any subsequent date to participate in another inspection with the landlord.

Based on the undisputed evidence before me, I find that the landlord has neither applied for dispute resolution nor returned the tenant's security deposit in full within the required 15 days. I accept the tenant's evidence that they have not waived their right to obtain a payment pursuant to section 38 of the *Act* as a result of the landlord's failure to abide by the provisions of that section of the *Act*. Under these circumstances and in accordance with section 38(6) of the *Act*, I find that the tenant is entitled to an \$1,500.00 Monetary Order, double the value of the security deposit paid for this tenancy. No interest is payable over this period.

As the tenant was successful in their application, they are entitled to recovery of the \$100.00 filing fee.

### Conclusion

I issue a Monetary Order in the tenant's favour in the amount of \$1,600.00 against the landlord. The tenant is provided with a Monetary Order in the above terms and the landlord must be served with this Order as soon as possible. Should the landlord fail to comply with this Order, this 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: November 28, 2017

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Residential Tenancy Branch