



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute codes      MNR MNDC MNSD FF

### Introduction

This hearing was convened in response to cross-applications by the parties pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

Landlord:

- a monetary order for unpaid rent and compensation for loss or damage pursuant to section 67;
- authorization to retain all or a portion of the tenant’s security deposit in partial satisfaction of the monetary order requested pursuant to section 38;
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

Tenant:

- cancellation of the landlord’s 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46;
- a monetary order for the cost of emergency repairs to the rental unit pursuant to section 33;
- a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

This matter was originally scheduled to be heard on July 20, 2018 by conference call. Both parties attended the original hearing date. The hearing began as scheduled at 9:00 a.m. and at 10:00 a.m. I adjourned the hearing as there was insufficient time to conclude the hearing and address all of the issues raised in the parties’ respective applications. The hearing was scheduled to be reconvened on November 26, 2018 and Notices of the reconvened date and time of hearing were sent to both parties by the Residential Tenancy Branch with call in instructions.

The landlord did not attend the reconvened hearing, although I waited until 1:50 p.m. in order to enable the landlord to connect with this teleconference hearing scheduled for 1:30 p.m.

The tenant attended the hearing. The tenant advised that he had attempted to contact the landlord to request an adjournment to the hearing but he was unsuccessful in getting a hold of the landlord. The tenant advised that he was at the airport at the time of the conference call and scheduled to board a connecting flight at 2:25 p.m. The tenant advised that he would like to withdraw his application and requested that his security deposit be returned in full. The tenant argued that the landlord's application to retain his security deposit should be dismissed as the landlord failed to attend the hearing.

In the original hearing, the parties confirmed that the tenancy had ended so the tenant's application to cancel the 10 Day Notice is moot.

### Issues

Is the landlord entitled to a monetary order for compensation for loss or damage?  
Is the landlord entitled to retain all or a portion of the security deposit?

### Background and Evidence

The tenancy began on March 1, 2015 and ended on March 31, 2018. The tenant paid a security deposit of \$800.00 at the start of the tenancy which the landlord continues to hold.

### Analysis

Section 38 of the Act provides that when a tenancy ends, the landlord may only keep a security deposit if the tenant has, at the end of the tenancy, consented in writing, or the landlord has an order for payment which has not been paid. Otherwise, the landlord must return the deposit, with interest if payable, or make a claim in the form of an Application for Dispute Resolution. Those steps must be taken within fifteen days of the end of the tenancy, or the date the tenant provides a forwarding address in writing, whichever is later. A landlord who does not comply with this provision may not make a claim against the deposit and must pay the tenants double the amount of the security deposit, pet deposit, or both, as applicable.

Although the landlord made an application to retain the tenant's security deposit, the landlord failed to follow through on that application by attending the hearing through to its conclusion. The landlord only attended the original hearing date and did not attend the reconvened hearing date which was necessary in order to fully conclude the hearing. As such, the landlord's application is dismissed in its entirety without leave to reapply.

I order the landlord to return the tenant's security deposit in the full amount of \$800.00 and the tenant is granted a monetary order for this amount.

### Conclusion

The tenant's application was withdrawn.

Pursuant to section 67 of the *Act*, I grant the tenant a Monetary Order in the amount of \$800.00. 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 27, 2018

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Residential Tenancy Branch