



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNSD, MNDCT, OT

### Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act"), for a monetary order for the return of the security deposit of \$375.00; and for a monetary order for damage or compensation under the Act for the Tenant of \$560.00; and for another matter not listed on the Application for dispute resolution.

The Tenant and her two agents, D.A. and J.D. ("Agents"), appeared at the teleconference hearing and gave affirmed testimony. However, no one attended on behalf of the Landlord. The teleconference phone line remained open for over 25 minutes and was monitored throughout this time. The only persons to call into the hearing were the Tenant and her Agents, who indicated that they were ready to proceed. I confirmed that the teleconference codes provided to the Parties were correct and that the only persons on the call, besides me, were the Tenant and her Agents.

I explained the hearing process to the Tenant and gave her an opportunity to ask questions about the hearing process. During the hearing the Tenant was given the opportunity to provide her evidence orally and to respond to my questions. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure ("Rules"); however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

As the Landlord did not attend the hearing, I considered service of the Notice of Dispute Resolution Hearing. Section 59 of the Act and Rule 3.1 state that each respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing. The Tenant testified that she served the Landlord with the Notice of Hearing documents in person on November 10, 2020, on the same day she was provided with the Notice package. The Tenant said that everything that she uploaded to the RTB was included in the documents she served on the Landlord. I find that the Landlord was deemed served with the Notice of Hearing documents in accordance with the Act. I, therefore, admitted the Application and evidentiary documents, and I continued to hear from the Tenant in the Landlord's absence.

### Preliminary and Procedural Matters

The Tenant provided her email address in the Application and confirmed it during the hearing. She also confirmed her understanding that the Decision would be sent to both Parties and any Orders sent to the appropriate Party.

During the hearing, it became apparent that the Parties had attended a prior dispute resolution hearing. I find that the other hearing dealt with one of the same issues that the Tenant has raised in the Application before me:

I had to take time off of work to place myself into withdrawal management services [due] to stresses I experienced [which] negatively affected my sobriety. See attached forms.

The Tenant seeks compensation of \$560.00 for this claim. In the previous matter, the Tenant requested compensation for “loss of wages”. The matter was dismissed by the other arbitrator, and I find that the legal principle of *res judicata* applies in this situation.

“*Res judicata*” is a rule of law that a final decision, determined by an arbitrator with proper jurisdiction and made on the merits of the claim, is conclusive as to the rights of the Parties, and constitutes an absolute bar to a subsequent application involving the same claims. Accordingly, I find that *res judicata* applies to this claim, and therefore, I dismiss the Tenant’s claim for compensation of \$560.00.

### Issue(s) to be Decided

- Is the Tenant entitled to a Monetary Order, for the return of the Security Deposit, and if so, in what amount?
- Is the Tenant entitled to an Order regarding another issue not listed on the Application for Dispute Resolution?

### Background and Evidence

The Tenant said that the periodic tenancy began on November 1, 2019, with a monthly rent of \$750.00 due on the first day of each month. The Tenant said she paid the Landlord a security deposit of \$375.00, and no pet damage deposit. She said the tenancy ended when she moved out of the rental unit on October 1, 2020. She said she gave the Landlord a letter with her forwarding address on October 19, 2020.

*Return of the Security Deposit*

The Tenant seeks the return of her \$375.00 security deposit from the Landlord. The Landlord submitted a letter to the RTB acknowledging that he did not return the Tenant's \$375.00 security deposit, because he said she did not give notice of moving out, and that she changed the locks without permission, which meant that access to the suite was thereby denied to the Landlord.

*Other Issue Not Listed*

The Tenant also applied for another matter not listed on the Application for dispute resolution. When I asked the Tenant to explain this claim, she said:

I want acknowledgement that [the Landlord, I.P.] is unfit to be a manager. He pursued me for a relationship and harasses women who live there.

The Tenant referred me to letters she had submitted from other tenants and her mother in this regard. Further, the Tenant's Counsellor submitted a positive letter that speaks well of the Tenant's character and living habits.

*Analysis*

Based on the documentary evidence and the testimony provided during the hearing, and on a balance of probabilities, I find the following.

*Return of Security Deposit*

I find that the Landlord has acknowledged that he did not return the Tenant's security deposit to her. I find that his reasons are not relevant, because he did not attend the hearing to present the merits of these reasons. Regardless, I find that the Landlord's reasons, as presented, are inconsistent with section 38 of the Act.

I find that that the tenancy ended on October 1, 2020, and that the Tenant provided her forwarding address to the Landlord in writing on October 19, 2020. Section 38(1) of the Act states the following about the connection of these dates to a landlord's requirements surrounding the return of the security deposit:

**38** (1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of

- (a) the date the tenancy ends, and
- (b) the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one of the following:

- (c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;
- (d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

The Landlord was required to return the \$375.00 security deposit within fifteen days of October 19, 2020, namely by November 3, 2020, or to apply for dispute resolution to claim against the security deposit, pursuant to section 38(1). There is no evidence before me that the Landlord returned any amount of the security deposit or applied to the RTB for dispute resolution, claiming against the security deposit. Therefore, I find that the Landlord failed to comply with his obligations under section 38(1).

Section 38(6)(b) states that if a landlord does not comply with section 38(1) that the landlord must pay the tenant double the amount of the security deposit. There is no interest payable on the security deposit.

As I have found that the Landlord did not comply with section 38(1), I, therefore, apply section 38(6) and award the Tenant with **\$750.00** from the Landlord, which is double the security deposit, pursuant to sections 38 and 67 of the Act.

#### Other Issue Not Listed

I appreciate the Tenant's concerns about the Landlord's behaviour, while she was a tenant at the residential property. However, these matters are not addressed by the *Residential Tenancy Act*, and therefore, I do not have the authority to grant you the remedy that you seek in this regard. As a result, I dismiss this claim without leave to reapply.

#### Conclusion

The Tenant's claim against the Landlord for return of the security deposit is successful in the amount of \$750.00. The Landlord did not return the Tenant's security deposit or apply for dispute resolution within 15 days of the later of the end of the tenancy and the

Landlord receiving the Tenant's forwarding address, contrary to section 38(1). Therefore, and pursuant to sections 38(6) and 67, I award the Tenant with double the amount of the \$375.00 security deposit or **\$750.00**.

The Tenant's claim for compensation for lost wages is dismissed, because it was already addressed and dismissed in a prior RTB hearing; therefore, the principle of *res judicata* prevents me from considering this matter again.

The Tenant's Application for an acknowledgement that the Landlord, I.P., is unfit to be a manager of a residential property is dismissed, because it is not a claim that is addressed in the Act. This claim is, therefore, dismissed without leave to reapply.

This Decision is final and binding on the Parties, unless otherwise provided under the Act, and 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: March 04, 2021

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Residential Tenancy Branch