



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards  
Ministry of Housing and Social Development

## **Decision**

**Dispute Codes:** MNDC, MNSD, FF

### **Introduction**

This Dispute Resolution hearing was convened to deal with an Application by the tenant for a monetary order for money owed or compensation for damage or loss under the Act and an order for the return of the security deposit and the pet damage deposit retained by the landlord.

The tenants were represented and gave affirmed testimony.

Although served with the Application for Dispute Resolution and Notice of Hearing in person by registered mail sent on July 23, 2008, the Landlord did not appear.

### **Issue(s) to be Decided**

The tenant was seeking to receive a monetary order for the return of the security deposit, & pet damage deposits, and compensation for moving costs and a rental abatement for the month of May 2008 during which the tenants were deprived of peaceful enjoyment of their suite by being forced to move.

The issues to be determined based on the testimony and the evidence are:

- Whether the tenant is entitled to the return of the security and pet damage deposit pursuant to section 38 of the Act. This determination is dependant upon the following:
  - Did the tenant pay a security deposit and pet damage deposit?

- Did the tenant furnish a forwarding address in writing to the landlord?
- Did the tenant provide written consent to the landlord permitting the landlord to retain the security deposit at the end of the tenancy?
- Was an order issued permitting the landlord to retain the deposit?
- Whether the tenant is entitled to monetary compensation under section 67 of the *Act* for damages or loss. This determination is dependant upon answers to the following questions:
  - Has the tenant submitted proof of the existence and monetary amount of the damage or loss?
  - Has the tenant submitted proof that the damage or loss was caused by the respondent through a violation of the *Act* by the respondent?

The burden of proof is on the applicant.

### **Background and Evidence**

The tenant submitted into evidence, proof of registered mail sent, a copy of the tenancy agreement, a typewritten chronology describing events that transpired on May 12, 2008, a letter from the tenant's employer indicating that the tenant had contacted the employer about the possibility of taking time off work "*due to an issue with his landlord*", a copy of a letter from the cable company confirming that the landlord, who had identified himself, by name had called the cable company and directed them to move the tenant's digital phone modem from the kitchen to the garage, a copy of an invoice from the moving company dated May 16, 2008 a copy of a letter from the tenant to the landlord dated May 21, 2008, giving notice to end tenancy due to the abusive conduct of the landlord during an incident that occurred on May 12, 2008, a copy of the tenant's letter to the landlord containing the forwarding address, dated June 1, 2008 and a copy of a letter

from the moving company testifying that the mover was subjected to verbal abuse from the landlord on May 16, 2008 and felt it necessary to speak to police regarding the situation.

The tenant testified that the tenants moved into the unit which is located in the same building as the landlord, on May 1, 2008 and that on the evening of May 12, 2008 the landlord, who was in the tenant's unit doing some work suddenly became extremely angry and subjected the tenants to a tirade during which the landlord started to scold and berate the tenants. The tenant testified that the landlord became increasingly furious, ranting irrationally about a variety of things and storming from room to room while making inflammatory comments about the tenant's activities and belongings. The tenant testified that the landlord's frightening demeanor caused one of the tenants such alarm that she became distraught and started crying and shaking, and wondering why the landlord was screaming at them in their own home without any provocation. The tenant testified that the landlord left and returned more than once, even barging in at one without knocking, while continuing to terrorize the tenant with yelling and abuse. The tenant testified that at one point the landlord bellowed, "if you don't like it MOVE" before the landlord finally stomped out slamming doors in his wake.

The tenant testified that both of the tenants were extremely traumatized after their ordeal with the landlord and immediately went to the nearby RCMP station where they sought guidance. The desk corporal advised the tenants, evidently based on past intervention with other tenants and the same landlord, that the couple should move out as soon as possible. The tenant testified that they took this advice seriously and found another place where they moved to on May 16, 2008.

I note that the letter from the cable company in evidence indicated that the landlord subsequently made an attempt to interfere with the tenant's internet account and their services with the firm. A letter from the moving company indicated that the landlord also initiated an unprovoked confrontation with the tenant's mover on the morning of their move and an observation was made that the landlord appeared to be intoxicated and

became hostile and verbally abusive and tried to forbid the movers access to the tenant's unit. Police intervention was necessary to resolve the matter and the move-out was completed. The tenant testified that costs of \$1,092.26 were incurred.

The tenant testified that moving costs are being sought, as well as an abatement in rent that was paid by the tenant for the month of May.

The tenant testified that despite receiving the forwarding address by registered sent on or around June 1, 2008, the landlord has failed to return the \$550.00 security deposit and the \$100.00 pet damage deposit. The tenant is seeking compensation for the deposits wrongfully retained by the landlord.

## **Analysis**

### **Claim for Damages and Loss**

In regards to an Applicant's right to claim damages from the another party, Section 7 of the Act states that if a tenant or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying tenant or tenant must compensate the other for damage or loss that results. Section 67 of the Act grants a dispute Resolution Officer the authority to determine the amount and to order payment under these circumstances.

I find that in order to justify payment of damages under section 67, the Applicant would be required to prove that the other party did not comply with the Act and that this non-compliance resulted in costs or losses to the Applicant, pursuant to section 7.

It is important to note that in a claim for damage or loss under the Act, the party claiming the damage or loss bears the burden of proof and the evidence furnished by the Applicant must satisfy each component of the test below:

### **Test For Damage and Loss Claims**

1. Proof that the damage or loss exists,

2. Proof that this damage or loss happened solely because of the actions or neglect of the Respondent in violation of the Act or agreement
3. Verification of the actual amount required to compensate for the claimed loss or to rectify the damage.
4. Proof that the claimant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage

In this instance, the burden of proof is on the claimant, that being the tenant, to prove the existence of the damage/loss and that it stemmed directly from a violation of the agreement or a contravention of the Act on the part of the landlord. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. Finally it must be proven that the claimant did everything possible to address the situation and to mitigate the damage or losses that were incurred

Based on the testimony of the tenant, I find that the tenant has proven that the landlord wilfully contravened several sections of the Act including section 28, Tenant's right to quiet enjoyment; section 29, Landlord's right to enter rental unit restricted; section 30, Tenant's right of access protected ; and Section 38, Return of security deposit and pet damage deposit. I find that the tenant suffered damages and losses that stemmed directly from the respondent's failure to comply with the Act.

In regards to the violation of the tenant's right to quiet enjoyment, I find that the extreme conduct perpetrated by this landlord served to irreparably damage the tenancy relationship to the point that had the tenants not moved, the tenants would suffer permanent deprivation of any possibility of peaceful enjoyment. I find that under the circumstances, the tenant's could not reasonably be expected to remain living in the suite thereafter, even for the purpose staying for the requisite amount of time to issue the requisite notice of one-month to end the tenancy under the Act . I find, as a fact,

that , through his aggressive and bizarre conduct, this landlord was responsible for effectively ending the tenancy in a manner not permitted under section 44 of the Act. I find that the landlord, having gone too far during the incident in question, has refused to recognize nor even acknowledge that the conduct was inappropriate, as evidenced by the fact that the landlord continued with similar behaviour when he tried to restrict access by the tenant's movers on May 16, 2008, using abusive language and threats necessitating police intervention. Accordingly, I find that the tenant has met the burden of proof to support compensation under the Act. Therefore I find that the tenant is entitled to a rental abatement of 100% for the month of May in the amount of \$1,100.00. I also find that the tenant is entitled to moving costs of \$1,092.26.

#### Security And Pet Damage Deposit

In regards to the return of the security deposit and pet damage deposit, I find that section 38 of the Act is clear on this issue. Within 15 days after the later of the day the tenancy ends, and the date the landlord receives the tenant's forwarding address in writing, the landlord must either repay the security deposit or pet damage deposit to the tenant with interest or make an application for dispute resolution claiming against the security deposit or pet damage deposit.

The Act states that the landlord can only retain a deposit if the tenant agrees in writing the landlord can keep the deposit to satisfy a liability or obligation of the tenant, or if, after the end of the tenancy, the director orders that the landlord may retain the amount.

I find that the tenant did not give the landlord written permission to keep the deposits, nor did the landlord make application for an order to keep the deposits.

Section 38(6) provides that If a landlord does not comply with the Act by refunding the deposit owed or making application to retain it within 15 days, the landlord may not make a claim against the security deposit or any pet damage deposit, and must pay the

tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

Accordingly I find that the tenant is entitled to be paid double the security deposit of \$550.00 and double the pet deposit of \$100.00, totalling \$1,300.00 plus interest of \$4.08 on the original deposits.

### **Conclusion**

Based on the testimony and evidence presented during these proceedings, I find that the tenant is entitled to compensation of \$3,546.34 comprised of \$1,100.00 rental abatement for the month of May 2008, moving costs of \$1,092.26, double the security and pet damage deposits and interest of \$1,304.08 and the \$50.00 fee paid by the tenant for this application. This order must be served on the Respondent and may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

September 25, 2008

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