



Dispute Resolution Services

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

DECISION AND REASONS

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

Introduction

This hearing dealt with applications by the tenant and the landlord, pursuant to the *Residential Tenancy Act*. The tenant applied for the return of the security deposit pursuant to Section 38. The landlord applied for rent owed and to recover the cost of cleaning of the unit pursuant to Section 67. Both parties applied for compensation for damage under the Act pursuant to Section 67 and to recover the filing fee pursuant to Section 72.

The tenancy began on August 17, 2008 and ended on November 30, 2008. The rent was \$475.00 and the tenant paid a security deposit of \$240.00 on August 17, 2008.

Both parties attended the hearing and were given full opportunity to present evidence and make submissions. On the basis of the solemnly affirmed evidence presented at the hearing, a decision has been reached.

Issues to be decided

Is the tenant entitled to the return of his security deposit?

Is the landlord entitled to a monetary order for rent owed and damages to the rental unit and if so, in what amount?

Background and Evidence

Based on the sworn testimony of both parties the following facts are agreed upon:

The tenancy lasted for three and a half months and the tenant paid rent for three months. The tenant is a truck driver by trade and operated a truck, which was parked two blocks away from the house. The tenant moved out on November 30, 2008 and provided his forwarding address to the landlord on December 02, 2008.

The tenant testified that at the time of the move in he paid one month's rent and was given to understand that he did not have to pay rent for the latter two weeks of August.

The tenant denied having borrowed a shovel and light bulbs from the landlord to use on

the truck that the tenant operated and parked two blocks away from the house. The tenant also denied taking items that were the property of the landlord. The tenant is claiming the return of double the security deposit in the amount of \$480.00.

The landlord stated that the tenant was never promised free rent for the latter two weeks of August. The landlord testified that the tenant paid rent for November on November 06, 2008 and then gave verbal notice on November 08, 2008 to move out on November 30, 2008. The landlord stated that this late notice was accepted as the tenant's smoking, was affecting the health of the landlord's children. The landlord stated that the tenant borrowed a shovel and light bulbs to fix the tenant's truck and did not return these items. The landlord also stated that there were other kitchen items that were missing from the suite after the tenant moved out. The landlord stated that the suite was left dirty and has provided photographs that depict damage to the carpet and freezer. The landlord advertised the unit and found a tenant for December 01, 2008. However the tenant was unable to move in on December 01, 2008 as the suite needed cleaning, and the landlord suffered a loss of income in the amount of \$45.00 which is the rebate in rent given to the new tenant. The landlord is making the following claim:

1.	Two weeks rent	\$237.50
2.	Loss of income	\$45.00
3.	Missing items	\$84.00
4.	Replace drapes	\$30.00
5.	Clean carpet	\$50.00
	Total	\$446.50

Analysis

Tenant's claim:

Section 38 (1) of the *Residential Tenancy Act* states that within 15 days after the later of the date the tenancy ends or the date that the landlord receives the tenant's forwarding address in writing, the landlord must repay the security deposit to the tenant with interest or make an application to claim against the security deposit. If the landlord fails to do so, the landlord may not make a claim against the security deposit and must pay the tenant double the base amount of the security deposit plus accrued interest.

I find that the tenancy ended on November 30, 2008, and that the tenant provided the landlord with a forwarding address in writing, on December 02, 2008. The landlord did not repay the security nor make an application for dispute resolution within 15 days of the date that the tenant provided the landlord with a forwarding address. Accordingly, pursuant to Section 38(6) of the *Residential Tenancy Act*, I find that the tenant is entitled to the return of double the security deposit (\$240.00) plus the accrued interest on the base amount (\$1.35). Hence the tenant has established a claim for a total of **\$481.35**.

Landlord's claim:

It is important for the claimant to know that to 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

- Proof that the damage or loss exists,
- Proof that this damage or loss happened solely because of the actions or neglect of the Respondent in violation of the Act or agreement
- Verification of the actual amount required to compensate for the claimed loss or to rectify the damage.
- 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 landlord, 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 tenant. 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.

I find that the landlord's claim for the above items meets all the components of the above test. Based on the sworn testimony of the both parties and the oral and documentary evidence submitted by the landlord, I find that the landlord has established a claim for damages in the amount of **\$446.50**.

The tenant has established a claim in the amount of \$481.38 and the landlord has established a claim of \$446.50. Hence, I grant the tenant an order under section 67 of the *Residential Tenancy Act* for the balance due of **\$34.85**. This order may be filed in the Small Claims Court and enforced as an order of that Court.

Conclusion

I grant the tenant an order under section 67 of the *Residential Tenancy Act* for the balance due of **\$34.85**.

Both parties must bear the cost of filing their own application.

Dated February 17, 2009.

Dispute Resolution Officer