

# Dispute Resolution Services

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

## **DECISION AND REASONS**

### **Dispute Codes:**

*MND, MNDC, MNSD, FF.*

### **Introduction.**

This hearing dealt with applications by the landlord and the tenant, pursuant to the *Residential Tenancy Act*.

The landlord applied for a monetary order for the cost of repairs and utilities, pursuant to section 67 and for the recovery of the filing fee, pursuant to section 72. The landlord also applied to retain the security deposit in satisfaction of his monetary claim.

The tenant applied for the return of double the security deposit, pursuant to section 38 and for monetary compensation for the loss of use of two rooms, spoiled food due to a defective refrigerator and damage to a dresser. The tenant also applied for the recovery of his filing fee, pursuant to section 72.

Both parties attended the hearing and were given full opportunity to present evidence and make submissions.

### **Issues to be decided**

Is the landlord entitled to a monetary order to recover the cost of repairs, utilities and the filing fee? Is the tenant entitled to the return of double his security deposit and other compensation?

### **Background and Evidence**

The tenancy started on November 01, 2008 and ended on January 31, 2009. The rent was \$2,200.00 due on the first day of each month and did not include utilities. Prior to moving in the tenant paid a security deposit of \$1,100.00.

### **Landlord's Application**

The landlord stated that he advised the tenant at the start of the tenancy that he was in the process of repairing a leak in the basement bedroom and that it would be ready by mid November. The landlord stated that the tenant agreed.

On November 12, 2009, the tenant informed the landlord about problems with the efficiency of the refrigerator. The landlord initially asked the tenant to contact the supplier and offered the tenant the use of another refrigerator located on the patio. On November 18, 2009, the landlord visited the rental unit and arranged for the repair of the refrigerator. He also completed the work on the leak in the bedroom by installing a sub floor.

The tenant gave the landlord verbal notice and moved out on January 31, 2009. On January 19, 2009, the landlord informed the tenant that he would be visiting on January 31, 2009 to conduct a move out inspection. The landlord called the tenant on January 30, 2009 to remind him of the appointment to conduct the move out inspection.

On January 31, 2009, the landlord arrived at the rental unit at approximately 3 p.m. and met the tenant's mother and sister who were in the process of moving out. They asked him to leave. He advised them that he would be in the house the next day and requested them to come by to conduct the move out inspection. The tenant did not show up. The landlord found damage to the drywall, thermostat and carpet.

On February 20, 2009 the landlord received a letter containing the forwarding address of the tenant. The landlord applied to retain the security deposit on March 04, 2009.

The landlord is claiming the following:

1.	Drywall Repairs and Paint	\$236.00
2.	Replace broken Thermostat	\$135.00
3.	Replace damaged carpet	\$640.97
4.	Utility bill	\$99.83
	<b>Total</b>	<b>\$1111.80</b>

### **Tenant's Application**

The tenant testified that he rented the house based on the information that it was a five bedroom home with a fenced yard. He stated that he was aware that the fifth bedroom was in the process of being repaired and would be ready by mid November.

The tenant stated that the landlord built a sub floor over the damp floor of the fifth bedroom without repairing the source of the water leak. He stated that he intended to rent it to a student but by the time the repairs were done, the student had found other rental accommodation. He also stated that he was unable to rent the room due to the raised floor. The tenant stated that water continued to leak and flow towards another bedroom causing mould on the baseboard. This left both rooms unfit for occupation.

The tenant also stated that a dresser, toys and books were ruined by the leak and he is claiming \$100.00 to replace them. The tenant has filed photographs showing mouldy baseboards and the installed sub floor. The tenant agreed that there was some damage to the walls which needed repair and paint and that he had broken the cover of the thermostat.

The tenant stated that the refrigerator was defective and the top shelves were at a warmer temperature than the bottom shelves and by the time the landlord came by to have it fixed, he lost \$150.00 worth of food. The tenant stated that he did not use the alternative refrigerator as it was located on the patio and was not clean.

The tenant is claiming the following:

1.	Destroyed food	\$150.00
2.	One fifth of rent for November and December for loss of use of one bedroom	\$880.00
3.	Two fifths of rent for January due to loss of use of Two bedrooms	\$880.00
4.	Damage to dresser, books and toys	\$100.00
5.	Double security deposit	\$2,200.00
	Total	<b>\$4210.00</b>

### **Analysis**

**Landlord's application:****Drywall repairs paint, replacement of broken thermostat and utility bill:**

The tenant agreed that there was damage done to the walls of one of the bedrooms which would require repair and paint. The tenant also agreed to having broken the cover of the thermostat and that he was responsible for the utility bill. Therefore the landlord is entitled to \$236.00 for drywall repairs and paint, \$135.00 to replace the thermostat and \$99.83 for the utility bill.

**Replace damaged carpet:**

The landlord stated that the carpet was new at the time the tenant moved in. The tenant agreed that the dog had soiled the carpet. The landlord contacted a carpet professional who advised him that the carpet had been repeatedly shampooed to the point where the color had been bleached out and that the carpet would have to be replaced. The landlord has filed an estimate in the amount of \$640.97. I find that the landlord has established a claim for this amount.

I find that the landlord has established a claim for the above items for a total of **\$1111.80**. I order that the landlord retain the security deposit of \$1,100.00 and accrued interest of \$2.80 in partial satisfaction of the claim and I grant the landlord an order under section 67 of the *Residential Tenancy Act* for the balance due of **\$9.00**. This order may be filed in the Small Claims Court and enforced as an order of that Court.

**Tenant's application:****Destroyed food:**

The tenant has not filed any evidence to support his claim. The landlord offered the tenant an alternative refrigerator in the interim, which he chose not to use. I find that the tenant has not established his claim for destroyed food and therefore his claim for \$150.00 is dismissed.

**Loss of use of bedrooms:**

The landlord built a sub floor over the damp area thereby including a step up, into the bedroom. The tenant stated that due to the raised floor and the dampness he was unable to get a tenant for the bedroom or use it himself. I find that the tenant did suffer a loss of the use of this room and therefore he is entitled to a reduction in rent for the term of the tenancy of three months. Since the size of the room was approximately 200 square feet and the total area of the house is approximately 3,800 square feet, I find that the tenant is entitled to a rent reduction of \$200.00 per month for a total of \$600.00.

Regarding the second bedroom that the tenant is claiming a rent reduction for, I find that the tenant did not file evidence to show that the room was unfit for occupation. He has filed photographs depicting some mould on the base board, but I find that this is not sufficient to warrant a reduction of rent.

Damage to the dresser, toys and books:

The tenant has not filed any evidence to support his claim of damage to the dresser, toys and books. Therefore this portion of the tenant's application is dismissed.

Double the security deposit:

Section 38 of the Residential Tenancy Act requires that 15 days after the later of the end of tenancy and the tenant providing the landlord with a written forwarding address, the landlord must repay the security deposit or make an application for dispute resolution. If the landlord fails to do so, then the tenant is entitled to recovery of double the base amount of the security deposit.

I find that the tenancy ended on January 31, 2009, and that the tenant provided his forwarding address in writing on February 20, 2009. I further find that the landlord made an application for dispute resolution within 15 days of receiving the tenant's forwarding address in writing and therefore the tenant is not entitled to the return of double the security deposit.

The tenant has established a monetary claim in the amount of **\$600.00**.

I will use the offsetting provisions of section 72 of the *Act* to grant the tenant a monetary order in the amount of **\$591.00** which consists of the tenant's entitlement of \$600.00 minus the landlord's entitlement of \$9.00.

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

### **Conclusion**

The landlord established a claim of \$1111.80 and after retaining the security deposit and accrued interest in partial satisfaction of his claim, the landlord has established an entitlement of **\$9.00**. The tenant has established a claim of **\$600.00**. Accordingly, I grant the tenant a monetary order in the amount of **\$591.00**.

Dated June 01, 2009.

---

Dispute Resolution Officer