



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing and Social Development

## **DECISION**

Dispute Codes      MNDC, MNSD, FF

### Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant for a Monetary Order for money owed or compensation for loss or damage under the *Act*, regulation or tenancy agreement, for the return of the security deposit and a Monetary Order to recover the filing fee.

The tenant served the landlord by registered mail on March 29, 2009 with a copy of the Application and Notice of Hearing. I find that the landlord was properly served pursuant to s. 89 of the *Act* with notice of this hearing.

Both parties appeared, gave affirmed testimony, were provided the opportunity to present their evidence orally, in written form, documentary form, to cross-examine the other party and witnesses, and make submissions to me. On the basis of the solemnly affirmed evidence presented at the hearing I have determined:

### Issues(s) to be Decided

- Is the tenant entitled to compensation for damages or loss and if so how much?
- Is the tenant entitled to recover the full amount of the security deposit?
- Is the tenant entitled to recover her filing fee from the landlord?

## Background and Evidence

This tenancy started on December 15, 2005. Rent was \$650.00 per month payable on the first of each month. The tenant paid a security deposit of \$325.00 on December 09, 2005. This was a month to month tenancy. The tenant and landlord did a simple move in condition inspection and a simple move out condition inspection. Neither of these was completed on the forms from the Residential Tenancy Branch and they do not contain full details as to the condition of the suite. The report only highlights areas that required repair. The reports did not mention the condition of the carpet when the tenant moved in but did say that it was dirty when the tenant moved out.

The tenant testifies that the tenancy had been good until the point when the landlord issued a rent increase which was above the allowed amount. The landlord issued this because the tenants' boyfriend had moved in and it was to cover the additional amount of utilities the tenant was consuming. The tenant testifies that the landlord became hostile when they refused to pay more than the allowed amount and she issued them with a Two Month Notice to End Tenancy for landlords' use of the property on February 27, 2007. This Notice was to take effect on April 30, 2007.

The tenant testifies that the situation became increasingly hostile between the landlord, herself and her boyfriend. The landlord made accusations against her boyfriend for kicking garbage bins over, leaving gates open, and putting oil on the landlords' windscreen wipers. The tenants witness denies these accusations. The tenant took steps to avoid the landlord as she felt intimidated by her. The tenant states that the last week she lived in the unit there was a flood. She notified the landlord about this and the landlord brought in industrial fans to dry the water damage out. The tenant had to move all her belongings out of the bedroom into the living room and lost use of the bedroom for a week. The tenant also states that the fans blocked the entrance to her washer and

dryer and she was unable to use them for a week. The tenant gave the landlord two days notice that she would be vacating the rental unit on March 31, 2007.

The tenant is claiming the return of rent for March of \$650.00 in compensation, One months rent for living in a hostile environment of \$650.00 and \$162.50 equivalent to one weeks rent, for the loss of the use of her bedroom and laundry facilities. The tenant states that the landlord returned \$224.42 of her security deposit and retained the rest to pay for carpet cleaning. The tenant is also claiming the refund of the amount deducted from her security deposit.

The landlord does not dispute the tenants' testimony that she issued a two Month Notice to End tenancy because her daughter was moving into the rental unit. The landlord returned the tenants rent cheque for April's rent as compensation due to the tenant as stated in s.51 of the act.

The landlord disputes the tenants' claims that the landlord became hostile towards her and her boyfriend. She did make telephone calls to ask the tenant to shut the gate that her boyfriend had left open. The landlords witness testifies that she saw the tenants' boyfriend kicking a garbage can over spilling its contents. The landlord testifies that when the flood happened she took prompt action to rectify the damage as this was an emergency situation.

## Analysis

Temporary Discomfort or inconvenience does not constitute a basis for a breach of the covenant of quiet enjoyment. The landlord has a responsibility to repair and maintain the rental unit and the reasonable efforts of a landlord to perform required repairs and maintenance cannot form the basis for a claim for loss of quiet enjoyment or use of

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space in a rental unit if the landlord has taken prompt action to make repairs and rectify damage. Therefore I dismiss this portion of the tenants claim for compensation.

The tenant did not dispute the landlords Two Month Notice within 15 days and gave the landlord only two days notice when she decided to leave the rental unit. Pursuant to s. 50 of the Act the tenant had to give the landlord 10 days notice. If this had been the case the tenant would have been able to claim back from the landlord the rent she had paid for the days she did not live in the rental unit. She would still have been entitled to recover one months rent as compensation. As the tenant did not do either of these things the landlord was within her rights to only give the tenant compensation for the month of April which is her rightful compensation as stated in the Act s. 51. Therefore, I dismiss this portion of the tenants claim for compensation.

The tenant is claiming one month rent as compensation for living in a hostile environment. The tenant has failed to provide sufficient evidence of this or the significant effect this had on her life. I agree that communication appeared to have broken down between the tenant and the landlord but the tenant has not provided sufficient evidence that can support the disruption this caused to her life. The tenant can not prove beyond reasonable doubt that she did not contribute towards this breakdown by inviting her boyfriend to move in to the rental unit without prior consultation with the landlord. Therefore, I dismiss this portion of the tenants claim for compensation.

The landlord withheld \$100.68 to pay for the carpet cleaning after the tenant moved out. As the landlord has not used the correct forms, provided sufficient details on her move in condition inspection report or specified in the tenancy agreement about who is responsible to pay for the carpet cleaning I find that she is not allowed to withhold this from the tenants security deposit. Therefore, I uphold this portion of the tenants claim and the landlord must return the security deposit and any accrued interest to the tenant



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within 15 days of receiving the tenants forwarding address in writing. A Monetary Order for \$104.24 which includes \$3.56 in accrued interest will be issued to the tenant.

Overall the tenants' claims have not been upheld with the exception of her claim for the landlord to return the remainder of her security deposit. Due to the above I find that the tenant is not entitled to recover the cost of her filing fee from the landlord.

## Conclusion

I HEREBY FIND in favor of the tenants claim for the return of her security deposit. A copy of the tenants' decision will be accompanied by a Monetary Order for **\$104.24**. The order must be served on the landlord and is enforceable through the Provincial Court as an order of that Court.

I HEREBY dismiss the rest of the tenants claim without leave to reapply.

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: June 17, 2009.

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Dispute Resolution Officer