



# Dispute Resolution Services

Residential Tenancy Branch  
Ministry of Housing and Social Development

## Decision

### Dispute Codes:

<u>MNSD</u>	The Return or Retention of the Security Deposit
<u>MNDC</u>	Money Owed or Compensation for Damage or Loss
<u>FF</u>	Recover the Filing Fee for this Application from the Respondent

### Introduction

The hearing was convened to deal with an application by the tenant for return of double the security deposit under the Act and compensation for damages. The tenant was seeking the return of double the \$475.00 deposit, \$50.00 reimbursement for purchase of insecticide and the \$50.00 fee paid for this application. This Dispute Resolution hearing was also convened to deal with a cross application by the landlord for a monetary claim of \$2,567.00 in damages and the \$50.00 filing fee. Both parties appeared.

### Issues to be Decided for the Tenant's Application

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

- Whether the tenant is entitled to the return of double the security deposit under section 38 of the Act. This determination depends on the following:
  - Did the tenant pay a security deposit?
  - Did the tenant furnish a forwarding address in writing to the landlord?
  - Did the landlord make application to retain the deposit within 15 days of the end of the tenancy and provision of the forwarding address?

### Issues to be Decided for the Landlord's Application

The landlord was seeking to receive a monetary order for expenditures incurred by the landlord having to refund the \$700.00 rent and reimburse \$1,440.00 business losses of

a commercial tenant, compensation for a portion of fumigation costs for bed bugs, and compensation for other damage left to the suite by the tenant .

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

- Whether the landlord is entitled to monetary compensation under section 67 of the *Act* for loss of rent and damages. This determination is dependant upon answers to the following questions:
  - Has the landlord submitted evidence as proof that the claim for damages or loss is supported pursuant to *section 7* and *section 67* of the *Act* by establishing on a balance of probabilities that:
    - the costs were incurred due to the actions of the tenant
    - there was a violation of the *Act* or Agreement by the tenant
    - proof that the amount or value being claimed is justified
    - a reasonable effort has been made to minimize the damages

The tenant had the burden of proof to establish that the deposit existed, that 15 days expired from the time that the tenancy ended and forwarding address given without the landlord either refunding the deposit or making application to keep it. The landlord had the burden of proof to show that compensation for loss and damages was warranted.

### **Background and Evidence**

The tenancy originally began on October 1, 2008 for a six-month fixed term ending on March 31, 2009 and the rent was \$950.00. A security deposit of \$475.00 was paid.

The tenant, a couple, rented one of two bedrooms and another couple rented the other with shared access to the remainder of the unit. The residential tenants of both rooms shared the kitchen, living room, solarium and computer room. However, there was also a commercial tenant who paid the landlord \$700.00 to use a portion of the living room for brief sessions tutoring students, twice per week on a regular schedule.

The tenant testified that the tenancy ended on March 31, 2009, and they vacated on March 12, 2009, leaving a written forwarding address. The tenant testified that the landlord did not refund the \$475.00 security deposit within 15 days, and in fact has not refunded it to date. The tenant is seeking a monetary order for double the deposit.

The landlord testified that there was no move-in inspection at the beginning of the tenancy and no move out inspection at the end of the tenancy. The written tenancy agreement had been submitted into evidence by the tenant. The landlord testified that the tenant and another couple shared the suite, but that a portion of the common area consisting of one corner of the living room, was also rented to a commercial client for its occasional, but not exclusive, use. The client utilized the shared space to tutor students in art twice per week for 2 hours, during which time the other residential tenants were still free to use the remainder of the space. The landlord testified that in early February the tenant permitted an additional guest to stay in the unit without the landlord's permission. Evidently the other occupants agreed to this with the understanding that the stay was for a short time. However, the guest remained for about a month and, according to the landlord, the living room area and other common areas were blocked by the guest's luggage with garbage bags containing clothing, an air bed and personal items strewn about on the furniture. The landlord received complaints from both the commercial client and the residents who were renting the other bedroom. The landlord testified that the tenant was spoken to about the tenant's breach of responsibility in monopolizing the common area and preventing the commercial client from using the space. The landlord testified that the commercial client ceased using the area and requested a refund and damages. The landlord then sent a letter to the tenant about the unreasonable number of occupants, demanding that the area be cleared and that the guest vacate and the landlord imposed a per-diem charge for the additional occupant. A copy of the February 27, 2009 letter to the tenant was in evidence.

The landlord's witness supported this testimony, stating that the space was no longer usable for the purpose of tutoring and that the tutoring ceased. The landlord testified

that the commercial client was granted a rent refund of \$700.00 because the living room could not be accessed. The commercial client had also requested \$1,440.00 in compensation for lost business and this was paid by the landlord. Copies of two cheques dated April 27, 2009, were submitted into evidence. The landlord testified that the tenant should be held responsible to reimburse the landlord for these expenditures because the tenant caused the problem by violating the terms of the tenancy and interfering with the use and enjoyment of other occupants.

The landlord testified that, shortly after the tenant's guest arrived, one room of the suite, that being the tenant's, became infested with bed bugs. The landlord stated that the fact that bedbugs were only found in the tenant's room is evidence that the tenants were responsible for the infestation. The landlord testified that a professional pest-control company fumigated the suite. The landlord is seeking reimbursement for half of the cost from the tenants, based on the landlord's belief that the tenant's guest brought the problem with her. In regards to the landlord's claim for other damages caused by the tenant, the landlord submitted a list of costs and some invoices in support.

The tenant testified that their guest did stay longer than anticipated, but did not sleep in the common areas and had only brought two suitcases as the guest had arrived by air and did not have a vehicle. The tenant denied that the living room was rendered unusable for the other resident and for the commercial client. The tenant testified that they made it a practice to stay in their room during the tutoring sessions. However, after the first week in February, they never saw any tutoring activities. The tenant testified that the landlord's claim for compensation by the tenant for the money it had chosen to pay back to the commercial client was not justified. The tenant also refuted the landlord's allegation that the tenant was responsible for the bed-bug infestation. The tenant testified that after the fumigation, the bedbugs returned and the pest control company failed to return for the second treatment. The tenant testified that they were forced to purchase several cans of spray insecticide and ended up having to discard or wash all of their possessions.

### **Analysis: Tenant's Application**

The tenant has made application for the return of the security deposit.

Section 38 of the Act deals with the rights and obligations of landlords and tenants in regards to the return of security deposit and pet damage deposit. Section 38(1) states that within 15 days of the end of the tenancy and receiving the tenant's forwarding address a landlord must either:

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

The landlord was in possession of the tenant's security deposit held in trust on behalf of the tenant at the time the tenancy ended on March 31, 2009 and the forwarding address was given to the landlord at that time. Under the Act the landlord should either have returned the deposit or made an application to keep it before April 15, 2009. The date of the landlord's application was June 18, 2009. Section 38(6) states that if a landlord meet the above deadline, the landlord; (a) may not make a claim against the security deposit and; (b) must pay the tenant double the amount of the security deposit.

Based on the above, I find that the tenant is entitled to receive double the security deposit of \$475.00 plus \$1.79 interest on the original deposit for a total of \$951.79

In regards to the tenant's claim for an additional \$50.00 for damages for the purchase of insecticide, I find that the tenant failed to prove that the landlord's violation of the Act caused the damages and I must dismiss this portion of the tenant's application.

### **Analysis: Landlord's Application**

In regards to the landlord's claim, an applicant's right to claim damages from the another party is covered under, Section 7 of the Act which states that if a landlord or

tenant does not comply with the Act, the regulations or their tenancy agreement, the non-complying landlord 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 violated the terms of the tenancy agreement and that this non-compliance resulted in costs or losses to the Applicant. 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 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 respondent. Once that has been established, the claimant must then provide sufficient evidence to verify the actual monetary amount of the loss or damage. Finally it must be proven that the claimant did everything possible to mitigate the damage or losses that were incurred.

The landlord's claim for compensation stems from expenditures that allegedly resulted from the tenant's misuse of the common living room shared with the commercial client.

The landlord's position was that the tenant caused the commercial client to end its rental agreement by interfering with this client's use of the premises. Under section 28 of the Act, a tenant is not permitted to significantly interfere with, and unreasonably disturb, the peaceful enjoyment of other residents. Such a violation of the Act would be a valid basis to end the tenancy through a One-Month Notice for Cause under section 47 of the Act. I find that the landlord issued a warning on February 27, 2009, but did not follow-up by issuing a Notice to End Tenancy for Cause. The landlord explained that this was because the fixed term was soon coming to an end as the agreement was to expire on March 31, 2009. Instead, the landlord refunded \$700.00 rent and paid \$1,440.00 damages to the commercial client on April 27, 2009.

I note that the landlord's February 27, 2009 warning letter purported to impose additional per-diem rent charges for the guest. However, section 5 of the Residential Tenancy Regulation prohibits a landlord from charging a guest fee, whether or not the guest stays over night. Moreover, under section 30 (1) a landlord must not unreasonably restrict access to residential property by (a) the tenant of a rental unit that is part of the residential property, or (b) a person permitted on the residential property by that tenant. In addition, the Act does not permit a landlord to increase the amount of rent for additional occupants unless the tenancy agreement contains a specific term permitting adjustments based on the number of occupants.

I find that under section 28 of the Act a tenant is entitled to quiet enjoyment including, but not limited to: a) reasonable privacy; (b) freedom from unreasonable disturbance; (c) exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29 [*landlord's right to enter rental unit restricted*]; (d) use of common areas for reasonable and lawful purposes, free from significant interference. The parties testified that, although not contained in the written tenancy agreement, the tenant verbally consented to share some of the living room space with the commercial client. In this regard, although it was the tenant's testimony that they stayed in their room during the lessons, I do not find that the tenant's use of the

common areas was significantly interfered with by the tutoring activities. However, I also do not find that the landlord has met its burden of proof to show that the tenant violated the Act by interfering with the commercial client's use of the space.

Commercial tenancies are not under the jurisdiction of this Act. The right to peaceful enjoyment does not specifically relate to claims on behalf of non-resident third parties. Moreover, I find that, whether or not the landlord chose to satisfy any liability with a commercial client pursuant to the terms of the agreement negotiated between them, this matter would have no relevance to the landlord's relationship with the tenant under the Act. I find that the tenant has no standing in such business transactions for the purpose of dispute resolution under the Residential Tenancy Act which governs tenancy agreements solely between landlords and tenants, and does not extend to third-party liability claims, which must be pursued in another judicial forum.

Given the above, I find that the landlord's claim for \$700.00 for refunding rent and the damage settlement paid to the commercial client for \$1,440.00, must both be dismissed.

In regards to the landlord's claim for partial reimbursement for the cost of fumigation, I find that section 32 (1) of the Act states that a landlord must provide and maintain residential property in a state of decoration and repair that: (a) complies with the health, safety and housing standards required by law, and; (b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant. The landlord has an obligation to address vermin infestation.

While the Act also imposes obligations on the tenant to "*maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access*", and to, "*repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant*", I find that the landlord did not produce sufficient proof that the tenant breached this obligation under the Act. An infestation can occur in a clean and orderly suite with all precautions taken. This unit



was occupied by multiple tenants, but even with a sole occupant, locating the causal source of bedbugs is still impossible for professionals to determine with any certainty. Given the above, I find that this portion of the landlord's application must be dismissed,

In regards to the other claims of damage and loss by the landlord, I find that the landlord has not sufficiently met any of the elements of the test for damages. Moreover, the landlord's failure to comply with section 23, and section 35, by jointly completing a Start of Tenancy Inspection Report and an End of Tenancy Inspection Report, makes it impossible to know what transpired in terms of damage occurring during the tenancy. Therefore, I find that this portion of the landlord's application must be dismissed.

### **Conclusion**

Based on the testimony and evidence presented during these proceedings, I find that the tenant is entitled to be compensated \$1,001.79 comprised of double the \$475.00 deposit, \$1.79 interest and the \$50.00 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.

The landlord's application is dismissed in its entirety without leave to reapply.

July 2009

Date of Decision

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Dispute Resolution Officer