



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing and Social Development

## **DECISION**

Dispute Codes      MNSD, OLC, FF, O

### Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant to obtain a Monetary Order to recover the security deposit, other related costs and to recover the filing fee. The tenant seeks an Order for the landlord to comply with the *Residential Tenancy Act (Act)*, regulation or tenancy agreement.

Service of the hearing documents, by the tenant to the landlord, was done in accordance with section 89 of the *Act*, sent via registered mail on June 23, 2009. Mail receipt numbers were provided in the tenants' documentary evidence. The landlord was deemed to be served the hearing documents on June 28, 2009, the fifth day after they were mailed as per section 90(a) of the *Act*.

The tenant appeared, gave affirmed testimony, was provided the opportunity to present her evidence orally, in writing, and in documentary form. There was no appearance for the landlord, despite being served notice of this hearing in accordance with the *Residential Tenancy Act*. All of the testimony and documentary evidence was carefully considered.

### Issues(s) to be Decided

- Is the tenant entitled to recover her security deposit? If so is she entitled to receive double this amount back?
- Has the landlord breached the *Act*, regulations or tenancy agreement if so should the tenant be compensated?
- Is the tenant entitled to recover the filing fee for her application from the landlord?



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## Background and Evidence

This tenancy started on July 01, 2007 and ended on May 28, 2009. This started as a fixed term tenancy with rent of \$1100.00 per month and reverted to a month to month tenancy on July 01, 2008 when the landlord increased the rent to \$1,160.00. The tenant paid a security deposit of \$800.00 on June 29, 2007. At this time the landlord also requested an amount of \$1,100.00 to cover the tenants last months rent. No move in condition inspection was completed.

The tenant testifies that during April, 2008 the landlord had major plumbing work done in the rental unit to the pipes in the kitchen and bathroom. The tenant had limited use of these facilities for approximately 20 days. She claims she had to buy drinking water and eat out with her daughter as the cooking facilities were also limited. The tenant claims an amount of \$150.00 in compensation.

The tenant claims that the landlord attempted to increase the rent in July 2008 by \$100.00 per month. The tenant disputed this amount and the landlord increased the rent by \$60.00. The tenant paid this amount as she was unaware that this was above the amount set out in the tenancy regulations.

The tenant gave the landlord two months notice to end the tenancy for May 28, 2009. The tenant paid to have the carpets professionally cleaned and she carried out a clean up of the rest of the unit. On May 28, 2009 the tenant met with the landlord and returned the keys to her along with her forwarding address in writing. The landlord claims the tenant caused damages to the rental unit but has not applied for dispute resolution to keep all or part of the tenants' security deposit. No move out condition inspection was completed. The landlord returned \$137.76 to the tenant on June 16, 2009.

The tenant had given the landlord a cheque for the last months rent and had to cancel this with her bank at a cost of \$12.50 as it was not returned to her by the landlord and the tenant had previously paid for her last months rent at the beginning of the tenancy. She agreed that the landlord could keep the additional \$60.00 for the rent increase from her security deposit.

## Analysis

There is no evidence to show that the landlord has applied for arbitration, within 15 days of the end of the tenancy or receipt of the forwarding address of the tenant, to retain the security deposit. The tenant agreed to the landlord retaining \$60.00 of the security deposit towards the last months rent in compliance with the *Act* section 38 (4)(a) and the tenant received \$137.76 from the landlord on June 16, 2009. The tenant is entitled to double of the remainder of the security deposit with interest (\$18.24) added on the original portion of the deposit to a sum of **\$1,222.72** pursuant to section 38(6)(b) of the *Act*.

Section 67 of the *Residential Tenancy Act* states: Without limiting the general authority in section 62(3) [*director's authority*], if damage or loss results from a party not complying with this *Act*, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party. I find that the landlord did not complete a move in or move out condition inspection report pursuant to sections 24 and 35 of the *Act* and in this instance has extinguished her right to retain any of the tenants' security deposit.

I also find the landlord had increased the rent above the allowable amount of 3.7% for 2008. The landlord increased the rent by \$60.00 per month when the allowable rent increase should have been \$40.70. Therefore I find the tenant is entitled to recover the amount overpaid of **\$212.30** pursuant to section 43(5) of the *Act*.

I also find the tenant is entitled to recover the interest accrued on the rent payment she paid on June 29, 2007 and held by the landlord for her last months rent to a sum of **\$24.94**. I also find the tenant is entitled to recover the costs incurred by her to cancel the rent cheque she gave to the landlord for her last months rent to a sum of **\$12.50** as this amount had previously been paid pursuant to section 67 of the *Act*.

I find the tenants claim for compensation of \$150.00 for loss of plumbing facilities for 20 days has no merit. The burden of proof is on the tenant to provide sufficient evidence to support this



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portion of her claim. In this instance I find the tenant has not provided any evidence and dismiss this portion of her claim without leave to reapply.

As the tenant has been largely successful in this matter I find she is entitled to recover the **\$50.00** filing fee for her application pursuant to section 72(1) of the *Act*.

A Monetary Order has been issued to the tenant for **\$1,522.46**

## Conclusion

I HEREBY FIND in favor of the majority of the tenants monetary claim. A copy of the tenants' decision will be accompanied by a Monetary Order for **\$1,522.46**. The order must be served on the respondent and is enforceable through the Provincial Court as an order of that Court.

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: September 30, 2009.

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Dispute Resolution Officer