



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing and Social Development

## DECISION

Dispute Codes MNDC, MNSD, OLC, 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 *Residential Tenancy Act (Act)*, Regulation or tenancy agreement and a Monetary Order to recover the filing fee. The tenant also seeks the return of his security deposit and an Order for the landlord to comply with the *Act*.

The tenant served the landlord by registered mail on August 11, 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 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 damage or loss under the *Act* and if so how much?
- Is the tenant entitled to receive double the security deposit back?
- Is the tenant entitled to an Order for the landlord to comply with the *Act*, regulations or tenancy agreement?
- Is the tenant entitled to recover the filing fee from the landlord for the cost of the application?



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## Background and Evidence

This tenancy started on November 15, 2005 and ended on June 15, 2009. Rent for this unit was \$1,750.00 per month and was due on the 15<sup>th</sup> of each month. The tenant paid a security deposit of \$1,000.00 on November 03, 2005. No move in or move out condition inspections were carried out.

The tenant testifies that he had a fixed term tenancy with the landlord and at the end of this fixed term the tenancy reverted to a month to month tenancy as stated on the tenancy agreement. The tenant gave the landlord a few months rent cheques in advance. On or about April 23, 2009 the tenant gave the landlord verbal notice that he would be ending the tenancy at the beginning of June, 2009 and after a discussion with the landlord they agreed that the tenancy would end on June 15, 2009. The tenant testifies that he was prepared to put his notice in writing but the landlord did not seem to require this.

The tenant testifies that in June, 2008 the landlord discussed with him about increasing the rent but asked that instead of doing this that the tenant would pay a one third share of the utility bills instead. The tenant agreed to do this. The tenant now feels that this was an illegal rent increase.

The tenant testifies that after he moved from the property he requested the landlord to return the rent cheques he held for June and July, 2009. The tenant claims the landlord cashed the cheque for June, 2009 after the tenant had moved from the property and after the tenant queried this, the landlord refunded this amount of \$1,750.00 to the tenant less \$306.23 he withheld for an outstanding share of a utility bill. The tenant received a cheque from the landlord for \$1,443.77. The tenant then put a stop on the rent cheque for July with his bank. The tenant claims the landlord attempted to cash the rent cheque for July. The tenant incurred bank charges for going overdrawn after the landlord cashed the June rent cheque and other charges for the July rent cheque to a total amount of \$27.98.

The tenant testifies that he gave the landlord his forwarding address in writing on July 05, 2009. He requested that the landlord return his security deposit and any post-dated rent cheques. The

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tenant testifies that he then received a letter from the landlords' solicitor dated July 18, 2009 claiming that the landlord had returned the tenants security deposit and claims that the tenant had damaged the suite. The landlords' solicitor also states that the tenant and landlord had agreed to six monthly rental extensions and therefore the tenant was liable for the rent to the end of the six month term. The tenant argues that if they had six monthly rental extensions from the end of the fixed term then the last six month term would have run from April to November, 2009. If the landlord then states in his solicitors letter that the tenant had always given the landlord six months of rent cheques why would the last rent cheque in the landlords' possession have been for July, 2009 and not November, 2009.

The landlord testifies that he did have a six monthly tenancy agreement with the tenant and that is why after the tenant moved out in June, 2009 the landlord cashed the tenants rent cheque because the term of the tenancy was not over. The tenant did not give the landlord written notice to end the tenancy and therefore the landlord felt the tenant should continue to pay rent until either the end of the fixed term or until the property was re-rented. The landlord states that the unit was re-rented on either August 15 or 30, 2009. The landlord testifies that when he gave the tenant a cheque for \$1,443.77 this was for the return of the tenants' security deposit and not June's rent as the landlord had made a mistake on the amount of the security deposit to be returned.

The landlord testifies that after the original fixed term tenancy ended he told the tenant he would not increase the rent but asked him instead to share the cost of the utility bills which the tenant agreed to do. The bills were split three ways and the tenant paid his share.

The landlord claims that he did not do the move out condition inspection because the tenant was supposed to come back to make some repairs to the rental unit and failed to do so.

## Analysis

I have carefully considered all the evidence before me, including the affirmed evidence of both parties. I find the landlords evidence about the return of the tenants security deposit (on a

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balance of probabilities) unlikely. I find the money the landlord returned to the tenant was his rent cheque for June, 2009 as it would have been that amount less the amount retained by the landlord for the tenants' share of the utility bill. As the security deposit was \$1,000.00 I find it unlikely that the landlord would have given the tenant \$1,750.00 back and written a cheque for \$1,443.77 without first determining what the tenants' security deposit was. I also find that the landlord did not conduct a move in or move out condition inspection pursuant to sections 23 and 35 of the **Act**. Therefore, I find the tenant is entitled to the return of double his security deposit plus any accrued interest pursuant to section 38(6)(b) of the *Act*.

With regard to the landlords claim that this was a six monthly tenancy agreement I find he has not provided sufficient evidence to support this claim. The tenancy agreement shows that the tenancy would revert to a month to month tenancy after the end of the fixed term. As there is no evidence to suggest that another agreement was entered into pursuant to #30 of the Residential Tenancy Policy Guidelines I find I prefer the evidence of the tenant in this matter. Therefore, the tenant is entitled to give the landlord one months notice to end the tenancy.

With regard to the notice the tenant gave the landlord; the section 45 of the *Act* states:

**45** (1) A tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that

(a) is not earlier than one month after the date the landlord receives the notice, and

(b) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

As the tenant did not give the landlord a written notice to end the tenancy the tenancy is deemed to have ended one month after the tenant moved from the rental unit. As the tenancy was from the 15<sup>th</sup> of each month I find the tenancy did not end until July 15, 2009 one month after the tenant moved out. However, as the landlord has not shown what steps he took to

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mitigate his loss in this matter by attempting to re-rent the unit after the tenant vacated on June 15, 2009, I will reduce the amount of rent owed to the landlord by half. Therefore, I find the tenant must pay the landlord half of one months rent of \$875.00. As the landlord was entitled to cash the rent cheque for June, 2009 because the tenant had not given written notice I find the tenant must bear the bank charges that he incurred. However, the landlord was not entitled to cash the rent cheque for July, 2009 and the tenant is entitled to recover the fees he incurred at the bank for stopping this cheque to an amount of **\$12.50**.

With regard to the tenants claim that the landlord increased the rent illegally I find that at the end of the fixed term the landlord and tenant agreed to the tenant paying one third of the utility bills. As this was an agreement between the parties the tenant can not now treat this as an illegal rent increase. Section 14(2) of the *Act* states:

(2) A tenancy agreement may be amended to add, remove or change a term, other than a standard term, only if both the landlord and tenant agree to the amendment.

Therefore, I find the tenant agreed to pay a third share of the utility bills and he is not entitled to an Order for the landlord to comply with the *Act*. This section of the tenants' application is dismissed without leave to reapply.

As the tenant has been partially successful in this matter he is entitled to recover his filing fee of **\$50.00** from the landlord pursuant to section 72(1) of the *Act*. A Monetary Order has been issued for the following amount:

Double the security deposit	\$2000.00
Bank fees	\$12.50
Filing fee	\$50.00
Subtotal	<b>\$2097.90</b>
Less amount owed to the landlord	(-\$875.00)
Total amount due to the tenant	<b>1,222.90</b>



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## Conclusion

I HEREBY FIND in partial favor of the tenants monetary claim. A copy of the tenants' decision will be accompanied by a Monetary Order for **\$1,222.90**. The order must be served on the respondent and is enforceable through the Provincial Court as an order of that Court.

The remainder of the tenants' application is dismissed 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: December 03, 2009.

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Dispute Resolution Officer