



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing and Social Development

## **DECISION**

### Dispute Codes

For the tenant – MNDC, MNSD, OLC, OPT, AS, FF

For the landlord – OPB, MNR, MNSD, FF, O

### Introduction

This decision deals with two applications for Dispute Resolution, one brought by the tenant and one brought by the landlord. Both files were heard together.

The landlord seeks to keep the tenants security deposit, and to recover the filing fee. As the tenant has moved out of the rental unit the landlord has withdrawn his application for an Order of Possession because the tenant has breached an agreement with the landlord. The tenant seeks compensation for damage or loss under the Act, he seeks the return of his security deposit, he seeks an order for the landlord to comply with the Act and to recover his filing fee. The tenant also seeks to gain permission to assign or sublet the rental unit. The tenant has withdrawn his application for an Order of Possession of the rental unit as he has moved out.

Both parties served the other in person with a copy of the Application and Notice of Hearing. The tenant also served the landlord with his amended copy of his application. I find that both parties were 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 witness, 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 the security deposit back?
- Has there been a breach of Section 34 of the *Residential Tenancy Act* by the landlord?
- Is the landlord entitled to keep all or part of the security deposit?
- Is either party entitled to recover filing fees from the other party for the cost of the applications?

## Background and Evidence

Both parties agree that the tenancy started on May 01, 2009. This was a fixed term tenancy for six months which ended at the end of the fixed term on October 31, 2009. Rent for this basement suite was \$1,200.00 per month and was due on the 1<sup>st</sup> of each month. The tenant initially paid \$600.00 security deposit to the landlord. No move in or move out condition inspection report was completed according to sections 23 and 35 of the Residential Tenancy Act (Act).

The tenant testifies that when he moved into the rental suite the landlord agreed that he could sublet a room to another tenant to help with the rent as he was a student at the time. The tenant claims that the landlord has unreasonable withheld his consent for a potential roommate after the tenant told the potential roommate he could move in because his personal references were excellent. The tenant claims the landlord has been difficult about him subletting until he eventually found a roommate the landlord agreed could move in around July 13, 2009. This roommate moved in on September 01, 2009 and continues as a tenant with the landlord.

The tenant testifies that his roommate did give him \$300.00 as his share of the security deposit which the tenant has retained. The tenant claims that due to the landlords' unreasonable attitude to potential roommates the tenant has endured a financial loss of \$1,200.00 as he has

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had to pay all the rent until September 01, 2009. He requests compensation from the landlord for this amount.

The tenant testifies that on moving out the landlord has only returned \$25.00 to him from his security deposit and has withheld the rest because the landlord claims the tenant has caused damage to the suite. The tenant testifies that when he moved into the suite the landlord said he would have the carpets cleaned but did not do so.

The tenant also testifies that he did install two metal bed frames to the walls of the bedroom and when he removed these; his roommate said he would take care of the holes as he did not want any further disturbance as he was studying for an exam. The tenant claims that these holes in the walls are normal wear and tear. The tenant testifies that when he moved out he put some belongings he no longer wanted into the back alley with the garbage and the landlord said he would remove them. The tenant feels he should not be charged for the removal of these items.

The tenant gave some additional testimony that is not relevant to the main issues in his application.

The landlord testifies that when the tenant signed the tenancy agreement he was the sole renter and the landlord did agree that the tenant could have a roommate to help with the rent. However, the roommate the tenant found, and agreed could move in, did not have the required references from his previous landlord and therefore the landlord did not give his permission for him to move in. When the tenant found another roommate who did meet the landlords criteria he was given permission to move in. The landlord feels he has not been unreasonable in withholding his permission for the first potential roommate to move in.

The landlord testifies that the tenant wrote to him on different occasions. One letter stated that he was paying his share of the November rent early as he would be out of town when the rent was due, that he was still looking for a new place to live. The landlord sent the tenant a letter reminding him of his obligations to move from the rental unit on October 31, 2009 at the end of the fixed term as stated in the tenancy agreement. This agreement also included the term that

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at the end of the tenancy the tenant would move out. Both the landlord and tenant have initialled this box and the tenant read and signed this agreement.

The landlord testifies that the tenant paid \$600.00 for his share of the rent for November, 2009 by money order in the event he could not find another place to live and this was accepted for use and occupancy only. The tenant later told the landlord he would move out when this money was returned to him. The landlord did not cash this money order and gave the tenant a letter dated October 29, 2009 which stated that the \$600.00 was returned to him and that the tenant would provide his forwarding address to receive his security deposit back. This letter also stated that the tenant would have no further claims, monetary or otherwise against the landlord or the dwelling and the tenant signed this letter in agreement.

The landlord testifies that when the tenant moved out he did a walk through the suite and found the walls had been damaged by a number of screw or bolt holes which had to be filled and repainted at a cost of \$100.00; the carpets were stained and had to be cleaned at a cost of \$74.00 and the tenants belongings which he had left in the back alley had to be removed at a cost of \$96.00. The landlord testifies he withheld this amount from the tenants' security deposit and returned the remainder of \$25.00 to him.

The landlords' witness confirms the landlords' testimony concerning the holes in the walls and the stains on the carpet. He testifies that when he moved into the suite the tenant had attached to hanging beds to the walls of the bedroom. These were fixed with bolts and plates with two bolts to each of the eight plates. The bolts and plates had caused damage to the walls and he told the tenant he was not taking responsibility for this damage. The landlords witness also testifies that the tenant had filing cabinets on the carpets which left some rust stains and there were other stains which appeared to be red wine.

## Analysis

I have carefully considered all the evidence before me, including the affirmed evidence of both parties and the witness. As for the landlords claim to keep the tenants security deposit I find the

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landlord has already kept a portion of the tenants security deposit and has only returned \$25.00 of this to him. Section 36(2) of the Act states:

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(2) Unless the tenant has abandoned the rental unit, the right of the landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord

(a) does not comply with section 35 (2) [*2 opportunities for inspection*],

(b) having complied with section 35 (2), does not participate on either occasion, or

(c) having made an inspection with the tenant, does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.

I find the landlord did not complete a move in or move out condition inspection form in accordance with the regulations and therefore, is not entitled to retain the tenants security deposit against damages to the rental unit. Due to the above the landlords claim to keep the tenants security deposit is dismissed without leave to reapply.

With regard to the landlords claim for damages made during the hearing, I find the landlord has not made an application for damage to the rental unit in accordance with section 67 of the *Act* and therefore is not entitled to a Monetary Order for damages to the rental unit. In any event the landlord has not provided any evidence to support his claim that the damages were caused by the tenant and verification of the actual amount paid to rectify the said damages. The landlord is at liberty to make a new application for damage to the rental unit or for compensation for damage or loss under the *Act*, regulation or tenancy agreement.

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With regard to the tenants claim for the return of his security deposit of \$600.00, I find he is entitled to recover the balance of his security deposit less the amount paid to him by his roommate of \$300.00 and less the \$25.00 already returned to him by the landlord. The tenant gave the landlord his forwarding address in writing on October 29, 2009. The landlord had 15 days from this date to return the tenants security deposit or apply for Dispute Resolution to keep it pursuant to section 38(1) of the *Act*. As the landlord has been unsuccessful with his application to keep the security deposit, pursuant to section 38 (6)(b) the landlord must pay the tenant double the amount of his security deposit. Therefore, the tenant is entitled to recover the amount of \$550.00. (\$275.00 X 2)

With regard to the tenants claim for compensation for damage or loss, I find the landlord is entitled to vet any prospectus roommates and follow up on references provided by them. I find that the landlord has not been unreasonable (pursuant to section 34 of the *Act*) in not allowing the tenants choice of the first prospective tenant to move in when his references did not meet the landlords requirements. As the tenant has moved from the rental suite no further orders are required for the landlord to comply with the act or to allow the tenant to assign or sublet the rental suite. Therefore, this section of the tenant application is dismissed without leave to reapply.

As the tenant has been partial successful with his application he is entitled to recover half his filing fee from the landlord to the amount of \$25.00. A monetary Order has been issued for the following amount:

|   |          |
|---|----------|
| Double the balance of the tenants share of the security deposit | \$550.00 |
| Total amount due to the tenant                                  | \$575.00 |



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## Conclusion

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

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 **\$575.00**. The order must be served on the landlord and is enforceable through the Provincial Court as an order of that Court.

The remainder of the tenants' application for compensation for damage or loss; for an Order for the landlord to comply with the Act and for an Order for the landlord to allow the tenant to assign or sublet the rental unit are 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 08, 2009.

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Dispute Resolution Officer