



# Dispute Resolution Services

Residential Tenancy Branch  
Ministry of Housing and Social Development

## Decision

### Dispute Codes:

<u>MNSD</u>	The Return 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

This Dispute Resolution hearing was convened to deal with an application by the tenant for monetary compensation of \$340.00 for damage or loss for diminished value of the tenancy due to not having use of a hose beckett for 17 months during the tenancy and for double the return of the \$725.00 security deposit paid at the start of the tenancy plus interest.. The total amount of the damages being claimed was \$1,806.00 and the \$50.00 fee paid by the tenant for this application.

At the outset of the hearing, the tenant testified that the landlord had since returned part of the deposit in the amount of \$708.97 which was mailed on September 15, 2009. The tenant testified that the landlord had been served with the notice of hearing by registered mail which was never picked up by the landlord and the landlord did not appear.

### Issues to be Decided

The tenant was seeking to receive a monetary order for the return of the security deposit retained by the landlord and monetary compensation for loss of value to the tenancy.

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

- Whether the tenant is entitled to the return of the security deposit pursuant to section 38 of the Act. This determination is dependant upon the following:
  - Did the tenant pay a security deposit and pet damage deposit?
  - Did the tenant prove the a forwarding address was provided in writing to the landlord?
  - Did the tenant provide written consent at the end of the tenancy permitting the landlord to retain the security deposit or any portion thereof?
  - Was any order issued permitting the landlord to retain the deposit?
- Has the tenant submitted proof that the claim for damages or loss is supported pursuant to *section 7* and *section 67* of the Act by establishing that the losses were incurred due to the actions of the landlord in violation of the Act or tenancy agreement?
  - Has the tenant proven that the amount or value being claimed is justified?
  - Has the tenant proven that the tenant made reasonable effort to minimize the damages?

The tenant has the burden of proof to establish that the deposit existed. The landlord has the burden of proof to show why the landlord had a legal right to retain the security deposit. In regards to the monetary claim for damages, the burden of proof is on the tenant/claimant.

## **Background and Evidence**

The tenant testified that the tenancy originally began in June 2008 with deposit \$725.00 and that the current rent had been \$1,500.00. No tenancy agreement was submitted into evidence. The tenant testified that for 17 months during the tenancy, the tenant was deprived of the use of a hose beckett and the tenant's position was that this missing item devalued the tenancy by \$20.00 per month, for a total claim of \$340.00.

The tenant testified that the tenant had provided a written forwarding address for the return of the security deposit prior to vacating on August 31, 2009. However, the landlord had only returned \$708.97 without either making application and obtaining an order. The tenant testified that he never gave the landlord written permission to retain any portion of the security deposit at the end of the tenancy.

## **.Analysis**

### **Security Deposit Claim by Tenant**

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.

Section 38(6) provides that If a landlord does not comply with the Act by refunding the deposit owed or making application to retain it within 15 days, the landlord may not

make a claim against the security deposit or any pet damage deposit, and must pay the tenant double the amount of the security deposit.

I find that the landlord retained \$16.03 of the tenant's security deposit plus \$6.36 interest which was held in trust on behalf of the tenant and that the landlord did not make an application to retain the deposit or portion thereof.

Based on the above, I find that the tenant is entitled to receive double the portion of the deposit wrongfully retained by the landlord, amounting to \$32.06 plus \$6.36 interest on the original deposit for a total claim of \$38.42.

#### Analysis: Damages and Compensation

The tenant's claim for a rent abatement of \$20.00 per month for 17 months is based on the landlord's failure to provide a hose beckett for the tenant's use, which the tenant alleged was part of the tenancy.

Section 7 of the Act states that if a landlord or tenant does not comply with this 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.

Therefore in order to justify payment of damages under section 67, the Applicant would be required to prove that the other party did not comply with the Act and that this non-compliance resulted in costs or losses to the Applicant, pursuant to section 7.

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 tenant, 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 evidence that can verify the actual monetary amount of the loss or damage. Finally it must be proven that the claimant did everything possible to address the situation and to mitigate the damage or losses that were incurred

I find that to support this claim, the tenant would need to establish that the landlord was at fault for the situation by contravening the Act or agreement. I find that the tenant has failed to provide sufficient proof that this item was supposed to be provided and that the landlord refused to provide it. Therefore, I find that element 2 of the test for damages has not been met. I also find that, by not failing to submit proof that action was taken to complain about the missing beckett or dispute the issue in a timely fashion during the 17 months in question, the tenant has not met element 4 of the test for damages to mitigate damages. Accordingly, I find that the portion of the tenant's application relating to the claim for \$340.00 must be dismissed.

**Conclusion**

Based on the testimony and evidence presented during these proceedings, I find that the tenant is entitled to total monetary compensation of \$88.42, comprised of \$32.06 for double the portion of the security deposit wrongfully retained, \$6.36 interest on the original deposit for and the \$50.00 fee paid by the tenant to file this application. I hereby grant a monetary order in the amount of \$88.42 in favour of the tenant. This order must be served on the respondent and if unpaid may be enforced in Small Claims Court if necessary.

The remainder of the tenant's application is dismissed without leave.

January 2010

Date of Decision

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Dispute Resolution Officer