



# Dispute Resolution Services

Residential Tenancy Branch  
Ministry of Housing and Social Development

## **DECISION**

Dispute Codes      MNDC, MNSD, MND, FF

### Introduction

This hearing dealt with an application by the tenant for a monetary order and recovery of his filing fee and a cross-application by the landlord for a monetary order. Both parties requested that the security deposit be awarded to them. Both parties participated in the conference call hearing.

The hearing was originally set to take place on January 5, 2010 but was adjourned to February 11 by consent to permit the parties opportunity to exchange evidence. At the hearing the landlord advised that she had not received the tenant's evidence, which he proved that he had sent by registered mail on February 2. The landlord indicated that she wished to proceed with the hearing despite not having the tenant's evidence and while the tenant objected, I determined that the hearing should proceed.

### Issues(s) to be Decided

Is the landlord entitled to a monetary order as claimed?

Is the tenant entitled to a monetary order as claimed?

### Background and Evidence

The following facts were not in dispute. The tenancy began on May 15, 2007 at a rental rate of \$3,200.00 per month. At that time a \$1,600.00 security deposit was paid. The tenant was renting all but one small portion of the residential property. On or about July 1, 2008 the parties entered into a new tenancy agreement whereby the tenant agreed to pay \$3,500.00 per month to rent the entire residential property. The tenant paid an

additional \$150.00 security deposit at that time. The tenant vacated the rental unit on July 31, 2009. The parties did not conduct an inspection of the rental unit either at the beginning or the end of the tenancy.

The tenant seeks an award of double his security deposit. The tenant claimed to have sent his forwarding address to the landlord by registered mail on or about August 5 but did not provide evidence of this. The landlord denied having received the forwarding address before she received the tenant's application for dispute resolution.

The tenant seeks an award of \$1,872.00 which he claims he paid as a result of an illegal rent increase. The tenant took the position that the tenancy agreement of July 2008 raised the tenant's rent by an amount exceeding that permitted by the Act.

The tenant seeks an award of \$15,000.00 for exposure to hazardous living conditions over the course of the tenancy. The tenant showed that the electrical panel in the home was located in a bathroom, which violated the electrical code as it was exposed to a high level of humidity. The tenant did not claim that he suffered any specific loss from this, but merely stated that he and his family were endangered throughout the tenancy.

The landlord claims \$13,400.00 as the cost of repainting the rental unit, removing garbage, repairing cabinetry and changing the laminate floor in the basement. The landlord testified that prior to the tenancy other tenants had lived in the rental unit. The landlord claimed that the tenant caused damage to the walls requiring repainting, that the tenant had left garbage, furniture and personal items behind in the house and yard, that the tenant had damaged cabinetry in the rental unit and that a flood which occurred during the tenancy caused damage to the laminate floor in the basement. The tenant testified that the walls of the rental unit were not in good condition at the beginning of the tenancy, denied having left any garbage, furniture or personal items in the rental unit or in the yard and testified that he himself had had to repair the cabinet doors a number of times. The tenant acknowledged that there had been a flood in the basement of the rental unit on at least two occasions, but testified that he immediately reported the flood to the landlord and cleaned up the standing water. The tenant testified that the flood

appeared to originate from the area of the dishwasher in the basement, but as he did not use that dishwasher, he did not know how the flooding could be considered his fault. The landlord entered into evidence photographs showing damage and areas which required cleaning for which she made no claim. The landlord also submitted photographs of several walls showing marks on the walls and of a kitchen cupboard front which was not in place.

The landlord claims \$3,500.00 in loss of income for the month of August. The landlord claimed that she spent a month repairing the rental unit and was unable to re-rent the unit as a result.

### Analysis

In order for the tenant to claim double the security deposit, he must prove that he provided the landlord with his forwarding address in writing prior to the time he made his application claiming double. Although the tenant referred to having sent a letter via registered mail, he did not provide corroborating evidence such as a copy of the letter or a copy of the Canada Post tracking number for registered mail. I find that the tenant has provided insufficient evidence to prove that he provided the forwarding address in writing prior to the time he made his application and accordingly I dismiss his claim for double the security deposit.

I find that the new rent which took effect on July 1, 2008 did not come into effect as a result of a rent increase, but as a result of the parties having voluntarily entered into a new tenancy agreement. Accordingly I dismiss the claim for recovery of rent paid as a result of an illegal rent increase.

Although the tenant claimed that he was living in a hazardous environment as a result of the location of the electrical panel, the tenant has not provided any evidence that he suffered any loss as a result. The tenant is not entitled to an award for having been exposed to a potentially hazardous situation, but only for loss suffered as a result of the hazardous situation. I find that the tenant has not proven that any loss resulted and as a result I dismiss his claim.

As the tenant has been wholly unsuccessful in his claim I find that he must bear the cost of the filing fee paid to bring his application.

Turning to the landlord's claim, the landlord has the burden of proving that the tenant caused the damage to the rental unit. In the absence of evidence showing the condition of the rental unit at the outset of the tenancy, I am unable to find that the damage to the walls of the rental unit can be attributed to the tenant. The landlord has provided no corroborating evidence to show that anything whatsoever was left at the rental unit as there are no photographs of the garbage, furniture or personal items she alleged were abandoned by the tenant. The landlord has not proven on the balance of probabilities that the cabinetry was not damaged at the outset of the tenancy or that the alleged damage may be characterized as going beyond reasonable wear and tear. The landlord has not proven that the damage to the laminate was caused by the tenant's act or negligence. For these reasons I find that the landlord has failed to prove her claim for damage and accordingly I must dismiss her claim to recover the cost of repairs. As I have found that the tenant is not responsible for the cost of repairs, I find that the tenant cannot be held responsible for the income lost while making those repairs. The landlord's claim is dismissed in its entirety.

### Conclusion

The claims of both parties are dismissed. As the landlord has been unable to establish a claim against the security deposit, I find the tenant is entitled to an order for its return. The total security deposit is \$1,750.00 with \$40.55 in interest having accrued to the date of this judgment. I grant the tenant an order under section 67 for \$1,790.55. This order may be filed in the Small Claims Court and enforced as an order of that Court.

Dated: February 12, 2010

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