



# Dispute Resolution Services

Residential Tenancy Branch  
Ministry of Housing and Social Development

## Decision

### Dispute Codes:

<u>MNR</u>	Monetary Order for Rent Owed
<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

The hearing was convened to deal with an application by the landlord for a monetary order for rent owed for the month of September 2009 as well as the costs of obtaining a writ of possession and reimbursement for the \$50.00 spent in filing the application. The hearing was also convened to hear an application by the tenant to obtain an Order for the return of double the security deposit and the equivalent of two month's compensation under section 51. The tenant was also claiming compensation for the costs of moving and storage stemming from a wrongful eviction.

Both parties appeared and gave testimony.

### Issues to be Decided for the Landlord's Application.

The landlord was seeking compensation for rent owed and the costs of the eviction including court costs to obtain a Writ of Possession from Supreme Court and associated bailiff costs. Therefore the issues to be determined based on the testimony and the evidence is whether or not the landlord is entitled to compensation under section 67 of the Act.

### Issues to be Decided for the Tenant's Application

The issues to be determined for the tenant's application are:

- Whether the tenant is entitled to the return of double the security deposit under section 38 of the Act.
- Whether the tenant is entitled to the equivalent of two month's compensation under section 51 because of bad faith on the part of the landlord in not utilizing the rental unit for the purpose stated for ending the tenancy under section 49 of the Act.
- Whether or not the tenant is entitled to compensation under section 67 of the Act for damages. by establishing, on a balance of probabilities:
  - that costs or losses were incurred due to the actions of the landlord in violation of the Act or Agreement by the landlord
  - proof that the actual amount or value being claimed is justified

The landlord had the burden of proof to show that rent was owed and unpaid. The tenant had the burden of proof to establish that the forwarding address was provided and that compensation and damages were warranted due to the circumstances in terminating the tenancy.

## **Preliminary Matters**

### **Landlord's Claim for Bailiff and Court Costs**

Section 72 permits an applicant to reimbursement of the fees paid under section 59 (2) (c) *[starting proceedings]* or 79 (3) (b) *[application for review of director's decision]* by one party to a dispute resolution proceeding, to another party, or director.

This section does not specifically deal with other related legal costs or bailiff fees.

However, in regards to an Applicant's right to claim damages from another party, Section 7 of the Act states that if a landlord or tenant does not comply with the Act, the regulations or the 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.

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 to the Applicant, pursuant to section 7. The claim must satisfy the following criteria: proof that damage or loss exists; proof that it stemmed from the actions or neglect of the respondent in violation of the Act or agreement; verification of the actual amount required to compensate for the claimed loss or to rectify the damage, and; proof that the claimant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage

The problem with using the above test for damages to justify bailiff fees and other legal costs of collection and gaining possession, is that although the damages certainly arose due to the tenant violating the Act or Agreement, the matter had subsequently gone from the Residential Tenancy arbitration process to the authority of a higher court. As soon as the matter proceeded to the judgment of a higher authority, I have no choice but to find that I no longer possessed the jurisdiction nor authority to deal with it.

Moreover, I find that the higher Courts may or may not award costs, (depending on what they entail). And, I must also point out that the bailiff has been granted separate legislative authority to sell possessions or impose liens to satisfy the associated costs.

Therefore, although it is evident that the costs were incurred due to the noncompliant actions of the other party in violating the Residential Tenancy Act, I find that I have no authority nor jurisdiction to determine these damages and the portion of the landlord's application pertaining to the claim for the costs of eviction must be dismissed.

#### Tenant's Section 51 Claim and Damages for Wrongful Eviction

The tenant was requesting the equivalent of 2 month's rent in compensation for the landlord's termination of the tenancy in bad faith and other costs of moving and storage stemming from wrongful eviction.

I find that during a previous hearing held on the tenant's application on August 18 , 2009, the tenant's application requesting that the section 49.1 Notice be cancelled was dismissed. The Dispute Resolution Officer presiding over the hearing was found that the tenant had missed the statutory deadline for disputing the Notice. Therefore, the merits of the tenant's application were never heard. At that time the landlord was issued a legal Order of Possession based on the Notice.

Because the tenancy had ended with a legal Order of Possession issued at the previous hearing held on August 18, 2009, this is not a matter that can be revisited. Even if the tenant's argument regarding the circumstances and landlord's alleged reasons for ending the tenancy had solid merit, I find the following as fact:

1. The tenancy between these two parties did not end illegally, but ended through an enforceable order of possession
2. A previous Dispute Resolution Officer made findings and issued a decision on the same matter and therefore I lack jurisdiction to permit me to hear or determine anything relating to the circumstances of why or how the tenancy ended including the damages that flowed from the incident.

In fact, any issues already dealt with at the prior hearing are now beyond my authority to hear nor to determine. I find that the matter of possession has already been irrevocably settled by the previous Dispute Resolution Officer and therefore claims of damages that stem from alleged noncompliant ending of the tenancy cannot proceed. All of the previous findings stand. I do not possess the authority to rehear any of the particulars, however compelling and factual they may be. Therefore is portion of the tenant's application must be dismissed.

### **Background and Evidence – Landlord's Application**

The only jurisdictional matter remaining in the landlord's application was the claim for \$500.00 rent owed for the month of September 2009. The only jurisdictional matter

remaining under dispute in the tenant's application was the tenant's claim for the return of double the security deposit of \$200.00 plus the \$2.39 interest totaling \$402.39.

### **Analysis**

A mediated discussion ensued, the outcome of which was that the parties mutually agreed that the landlord would retain the security deposit in full satisfaction of all past and future claims between these two parties.

### **Conclusion**

Based on the mutual agreement between the parties, I hereby order that the landlord retain the tenant's security deposit in full satisfaction of any and all past or future claims by either party.

March 2010

Date of Decision

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Dispute Resolution Officer