



# 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 a monetary order for money owed or compensation for damage or loss under the Act for partial rent for January 2010, missing possessions and the return of the security deposit. The total amount of the damages being claimed was \$502.50.

Both the landlord and tenant were present and each gave affirmed testimony in turn.

### 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 and other damages.

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 contingent upon the following:
  - Did the tenant pay a security deposit and pet damage deposit?

- Did the landlord have a forwarding address for the tenant?
- Was there any order issued permitting the landlord to retain the deposit or written permission from the tenant to keep 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. In regards to the monetary claim for damages, the burden of proof is also on the tenant/claimant.

### **Background and Evidence**

The tenancy began on December 1, 2009 with rent of \$400.00 per month and a deposit of \$200.00. The tenant testified that on January 15, 2010 he was suddenly evicted from his room by an agent of the landlord without proper notice on a valid form. The tenant testified that the landlord then changed the locks and he was unable to return to his room despite having paid rent to the end of the month of January 2010. The tenant testified that he was not given access to his possessions which were packed by the landlord and stored in the garage. The tenant stated that when he retrieved his belongings, he was missing some items including DVDs worth \$50.00, a \$2.50 bus pass and a universal remote control for his TV valued at \$50.00.

The tenant was claiming \$200.00 rent abatement, \$200.00 for the return of his security deposit and \$102.50 for missing items that were under the landlord's control.

The landlord testified that the tenant had become intoxicated on more than one occasion during the tenancy and that , on January 15, 2010, the tenant was found to be out of control and had urinated on the mattress in his room. The tenant was told to leave and his personal belongings were packed up and placed in secure storage in the garage. The landlord stated that no inventory of the tenant's possessions was kept, but that nothing was taken nor discarded and the tenant retrieved his possessions without any problem later on. The landlord stated that, although the tenant's new address was provided on the Notice of Dispute Resolution, sent in February 2010, the tenant had failed to submit a written forwarding address after the tenancy ended. The landlord stated that the tenant had left damages including a ruined mattress. However, but no cross application was submitted by the landlord for a monetary claim for damages.

### **.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.

I find that the landlord retained a portion of the tenant's security deposit held in trust on behalf of the tenant and that the landlord did not make an application to retain the deposit or portion thereof. Therefore, I find that the tenant is entitled to \$200.00 for the return of the security deposit.

### Analysis: Damages and Compensation

In regards to the tenant's claim for \$200.00 representing a half month rent abatement due to being wrongfully evicted, I find that section 44 of the Act outlines the circumstances by which a landlord can end the tenancy. This can occur only if the landlord gives notice to end the tenancy in accordance with:

- section 46, landlord's notice for non-payment of rent,
- section 47, landlord's notice for cause,
- section 48, landlord's notice for end of employment,
- section 49, landlord's notice for landlord's use of property.

A tenancy can be ended by a tenant with proper notice if it is a month-to-month agreement.

A fixed term tenancy can be ended at the expiry of the fixed term.

Other ways of ending a tenancy without violating the Act are through a written agreement mutually signed by both parties or by obtaining an order to end the tenancy.

A landlord can also consider the tenancy ended by the tenant if the tenant abandons the unit.

Finally a tenancy is deemed to end through 'frustration' which occurs when continuing the tenancy is impossible through the fault of neither party or through serious incidents that could not have been anticipated by the parties at the time the tenancy began.

In this instance I find that it appears the landlord's intent was to end the tenancy for cause which is covered by section 47 of the Act and requires a One-Month Notice on the proper form. The effective date to end must be (a) not earlier than one month after the date the landlord issues the notice; and (b) the day before the day in the month, that rent is due under the tenancy agreement.

I find that in the case before me, the landlord did not follow the Act in legally ending the tenancy and was in violation.

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.

There is no doubt that the landlord violated the Act by arbitrarily ending the tenancy mid month without valid notice. I find that the tenant had paid full rent for the month of January 2010, in the amount of \$400.00, but was forced by the landlord to leave mid-month on January 15, 2010. I find that the tenant was actually entitled to possession of the unit for the entire month and had paid for a period of time during which he was prohibited by the landlord from occupying his rental unit. Accordingly, I find that the landlord's violation of the Act in taking physical possession of the room entitles the tenant to damages claimed, that being reimbursement of \$200.00 representing a portion of the rent paid for January.

In regards to the tenant's loss of the personal possessions with claimed worth of \$102.50, it is clear that the landlord was in violation of the Act in regards to its handling of the tenant's possessions. I find that the Act imposes certain obligations on a landlord in relation to how a tenant's property is handled. I find that the landlord was required to comply with section 25 of the Regulations which states that the landlord must store the tenant's personal property in a safe place and manner for a period of not less than 60 days following the date of removal and keep a written inventory of the property. According to section 30 of the Regulations, a landlord also owes a duty of care to the tenant when dealing with a tenant's personal property and must exercise due diligence and caution as required to ensure that the property is not damaged, lost or stolen. In this instance I find that the landlord admitted that no inventory list was created to record the tenant's belongings, all of which were in the possession of the landlord for a time and were allegedly returned to the tenant at a later date. However, despite the fact that the landlord was not in compliance with the Act, I must reject the tenant's claim of \$102.50 for the loss, because the claim failed element 3 of the test for damages.

In regards to the landlord's testimony claiming losses and damages by the tenant, I am not able to hear nor consider a monetary claim by the landlord during these proceedings as the matter before me was convened to deal with the *tenant's* application. That being said, I must point out that the landlord is at liberty to make a separate application for

dispute resolution if the landlord intends on initiating a formal claim for compensation from the tenant for damages and loss pursuant to section 67 of the Act.

In the matter before me, however, I find that under section 38 and 67 the tenant is entitled to compensation in the amount of \$400.00 consisting of \$200.00 for the return of the security deposit and \$200.00 rent abatement for the month of January 2010.

### **Conclusion**

Based on the testimony and evidence presented during these proceedings, I hereby grant a monetary order in the amount of \$400.00 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.

May 2010

Date of Decision

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Dispute Resolution Officer