



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Ministry of Housing and Social Development

## **DECISION**

### Dispute Codes

For the landlord – MNSD, MNDC, SS, FF, O

For the tenant – MNSD, MNDC, FF, O

### Introduction

This decision deals with two applications for dispute resolution, one brought by the landlord and one brought by the tenant. Both files were heard together. The landlord seeks an Order to keep the security deposit and for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulation or tenancy agreement. The landlord also seeks to recover his filing fee. The landlord withdraws his application for an Order for Substitute Service.

The tenant seeks the return of her security deposit and a Monetary Order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement. The tenant also seeks to recover her filing fee.

Both Parties served the other Party with a copy of the Application and Notice of Hearing by registered mail. I am satisfied that both parties were properly served pursuant to s. 89 of the *Act* with notice of this hearing.

Both parties appeared and the landlords' legal counsel appeared with him. The Parties gave affirmed testimony, were provided the opportunity to present their evidence orally, in written form, documentary form, to cross-examine the other party, 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 landlord entitled to keep the tenants security deposit?

Residential Tenancy Branch  
Ministry of Housing and Social Development

- Is the landlord entitled to a Monetary Order for money owed or compensation for damage or loss?
- Is the tenant entitled to recover her security deposit?
- Is the tenant entitled to a Monetary Order for money owed or compensation for damage or loss?

## Background and Evidence

Both Parties agree that this tenancy started on April 24, 2010 and ended on April 30, 2010. The monthly rent for this house was \$2,000.00 per month and was due on the first day of each month. The tenant paid a security deposit of \$1,000.00 on April 21, 2010.

The landlord testifies that he entered into a rental agreement to rent his house to the tenant and her children starting May, 01, 2010. He states the tenant viewed the house on two separate occasions and said that she loved it and she would live there with her children and her parents would visit them. However, he claims the tenant approached him and said that she needs to move in sooner and could she move in on April 24, 2010. The landlord testifies that he agreed to this but had to move his belongings from the house first. On April 24, 2010 the landlord had moved most of his belonging and the tenant arrived to move in. The landlord states he was concerned that he had not had time to clean the house and states the tenant said that would be fine and she would do the cleaning. The landlord states he told the tenant he had left some items at the house including some furniture and garbage and he would arrange to have these picked up later in the week.

The landlord claims on April 30, 2010 he went to the house to see if everything was alright and the tenants mother told him they were moving out as the house was not worth \$2,000.00 a month. The landlord claims the tenant gave him a list of repairs she wanted him to do and they discussed the broken window which he states he told her would take a week to organise a repair. The landlord claims he asked the tenant if there was anything urgent on the list and she said there was nothing life threatening. The landlord claims the tenant asked him to sign a mutual agreement to end the tenancy if he would not do the repairs before May 01, 2010.

Residential Tenancy Branch  
Ministry of Housing and Social Development

The landlord states the tenant did pay a \$1,000.00 security deposit but did not pay any rent. He claims the tenant breached the fixed term tenancy agreement by moving out after six days and he had to re-advertise the house for rent and found a new tenant for May 15, 2010. The landlord seeks an Order to allow him to keep the tenants security deposit to cover outstanding rent for this period and seeks to recover his filing fee of \$50.00 paid for his dispute.

The tenant testifies that the landlord was aware that her parents would be living with her to help her with her children. She claims she paid the landlord \$400.00 on April 22, 2010 and he failed to give her a receipt for this amount. The tenant claims she did look over the property on two occasions however; the landlord did not complete a move in or move out condition inspection report with her.

The tenant claims that initially they were happy with the condition of the property but after moving in they found an amount of defects and additional cleaning and she considered the house to be unhygienic. The tenant states she provided the landlord with a list of items to be repaired the landlord told her he was renting her the house not the light fixtures and she would have to wait for the window to break before he would repair it. The tenant states there was garbage, personal belongings and dog feces in the back yard, two window screens were ripped, the toilet was chipped and left unclean, cupboard doors were hanging off, a light fixture was broken, a window was cracked, painting was required and a heat vent was missing in a bedroom.

The tenant states the landlord failed to provide her with her copy of the tenancy agreement.

The landlord states he brought the tenants copy of the tenancy agreement to the house on the day the tenants were moving out and left it in the kitchen. The landlord also states his father removed the garbage and dog feces from the back yard. The landlord also states the house and property were not dangerous or filthy as suggested by the tenant. He states his wife ran a day care business from the property and they were inspected regularly by a health inspector for the day care.

Residential Tenancy Branch  
Ministry of Housing and Social Development

The tenant seeks to recover \$721.80 for 60% of her moving expenses as she had to vacate the rental unit because the landlord would not do the repairs. The tenant seeks \$90.00 in compensation for loss of earnings as she states she had to leave work to come home when the landlord was outside the property taking pictures, the tenant seeks to recover her \$1,000.00 security deposit and the \$50.00 paid to file her application for this dispute.

## Analysis

I have carefully considered all the evidence before me, including the affirmed evidence of both parties. Section 45 (2)(b) of the *Act* states a tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that is not earlier than the date specified in the tenancy agreement as the end of the tenancy. The tenant argues that the property was not fit to be occupied due to the level of hygiene and the repairs that the landlord refused to do, however, I find the tenant did not give the landlord the list of repairs she requested him to do until the day before she moved out..

By the tenants own admission none of these repairs could be classed as emergency repairs in accordance with section 33 (1) of the *Act*. The tenant also argues that the landlord did not give her a copy of the tenancy agreement which she signed at the start of the tenancy however the *Act* allows 21 days for the landlord to give the tenant a copy of this agreement but the tenant moved from the rental unit six days after the start of the tenancy so the landlord did not have opportunity to provide her with a copy..

Section 32 of the *Act* states a landlord must provide and maintain residential property in a state of decoration and repair that a) complies with the health, safety and housing standards required by law and, b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant. It is my decision that the tenant did not give the landlord a reasonable amount of time to make the repairs and did not file a application seeking an Order for him to make repairs. Consequently, I find the tenant moved from the rental unit and breached the tenancy agreement in place with the landlord and the landlord is entitled to recover a loss of rent up to the time the unit was re-rented on May 15, 2010.

Residential Tenancy Branch  
Ministry of Housing and Social Development

The landlord seeks to keep the tenants security deposit of \$1,000.00 to cover him against this loss of rent; Sections 23(4), 35(3) of the Act require a landlord to complete a condition inspection report at the beginning and end of a tenancy and to provide a copy of it to the tenant even if the tenant refuses to participate in the inspections or to sign the condition inspection report. In failing to complete the condition inspection reports when the tenant moved in and out, I find the landlord contravened s. 23(4) and s. 35(3) of the Act. Consequently, s. 24(2)(a) and s. 36(2)(a) of the Act says that the landlord's right to claim against the security deposit for damages is extinguished.

I find however, that although the landlord did not complete the inspection he has not made a claim for damage to the rental unit but seeks to retain the security deposit against unpaid rent. Consequently, I order the landlord to keep the tenants' security deposit to compensate him for the loss of rent from May 01 to May 15, 2010 pursuant to section 38(4)(b) of the *Act*.

The tenant seek to recover 60% of her moving costs, and a loss of earnings from work however I find as the tenant choose to end the tenancy without pursuing her other options and mitigating her loss that her application for a Monetary Order for compensation is dismissed.

The tenant's application for the return of her security deposit is dismissed. As the tenant has been unsuccessful with her claim I find she must bear the cost of filing her own application.

As the landlord has been successful with his claim I find he is entitled to recover the \$50.00 filing fee from the tenant pursuant to section 72(1) of the *Act*.

## Conclusion

I HEREBY FIND in favor of the landlord's monetary claim. I ORDER the landlord to keep the security deposit of \$1,000.00.

A Monetary Order for the sum of **\$50.00** will accompany the landlords' decision.



# Dispute Resolution Services

Page: 6

Residential Tenancy Branch  
Ministry of Housing and Social Development

The tenants' application is dismissed in its entirety 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: September 29, 2010.

---

Dispute Resolution Officer