



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Public Safety and Solicitor General

## **DECISION**

Dispute Codes      MND MNSD FF  
                             MNDC MNSD FF

### Introduction

This hearing dealt with cross applications for Dispute Resolution filed by both the Landlord and the Tenant.

The Landlord filed seeking a Monetary Order for damage to the unit, site or property, to keep all or part of the security deposit, and to recover the cost of the filing fee from the Tenant.

The Tenant filed seeking a Monetary Order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, for the return of his security deposit, and to recover the cost of the filing fee from the Landlord.

Service of the hearing documents by the Landlord to the Tenant was done in accordance with section 89 of the *Act*, sent via registered mail. The Tenant confirmed receipt of the Landlord's hearing documents and evidence.

Service of the hearing documents by the Tenant to the Landlord was done in accordance with section 89 of the *Act*, sent via registered mail. The Landlord confirmed receipt of the hearing documents and the first submission of evidence from the Tenant; however the Landlord did not receive the Tenant's second submission of evidence, which consisted of a second CD and a written statement, until January 4, 2011, the day before the hearing.

The parties appeared at the teleconference hearing, gave affirmed testimony, were provided the opportunity to present their evidence orally, in writing, and in documentary form, pursuant to the *Residential Tenancy Branch Rules of Procedure*.

### Preliminary Issues

The Tenant provided two CD's as evidence and testified that the CD's contained photographs from his digital camera. The Landlord submitted a written statement in his

evidence which indicates he does not have the equipment to view the Tenant's CD evidence. The *Residential Tenancy Branch Rules of Procedure # 11.8* stipulates the form in which evidence is to be provided such as audio tape and VHS videotape. There are currently no provisions which allow submission of evidence in a CD/DVD technology format.

Section 88(1) of the *Residential Tenancy Act* and Section 3.1 of the *Residential Tenancy Rules of Procedures* determines the method of service for documents. The Tenant has applied for a monetary Order which requires that the Tenant serve the respondent Landlord as set out under *Residential Tenancy Rules of Procedures*. The Tenant testified he received the Landlord's evidence prior to the end of December 2010 and this evidence includes the Landlord's statement that he could not view the CD evidence. Therefore I find the Tenant was notified more than five days in advance of this hearing that the Landlord was not able to view the evidence in CD format and he made no effort to change the format of his evidence prior to the hearing. It was not until I told the Tenant that his CD evidence would not be considered that he requested permission to resubmit his evidence in a different format. After careful consideration of this matter I denied the Tenant's request to resubmit his evidence in a different format pursuant to the *Residential Tenancy Rules of Procedure # 11.5 (b)*. The Tenant was however allowed to provide testimony pertaining to the contents of the CD's.

## Issue(s) to be Decided

1. Has the Tenant breached the *Residential Tenancy Act*, regulation, or tenancy agreement?
2. If so, has the Landlord proven entitlement to a monetary claim as a result of that breach?
3. Has the Landlord breached the *Residential Tenancy Act*, regulation, or tenancy agreement?
4. If so, has the Tenant proven entitlement to a monetary claim as a result of that breach?

## Background and Evidence

The Landlord has rented the main floor of this up and down duplex since approximately 1997. He in turn enters into rental agreements as a landlord and rents out the unfurnished second bedroom to tenants. He shares the rest of the common areas

which includes the living room, kitchen, bathroom, and storage areas. There is a common laundry facility which is shared between the upper duplex tenants, himself and his tenant.

I heard disputed testimony as to the terms of the tenancy agreement and whether the tenancy agreement was verbal or written.

The Landlord testified the parties wrote the terms of the tenancy agreement on a blank piece of paper and signed it; however he was not able to locate that document and did not provide a copy of the document into evidence. He stated the month to month tenancy was effective April 1, 2008. Rent was initially payable in the amount of \$495.00 per month and was later increased to \$510.00. Rent was payable on the first of each month and the Tenant paid a security deposit of \$247.50 sometime in early April 2008. The Landlord did not conduct a move-in inspection report nor did he conduct a move-out inspection report. The tenancy ended after the Landlord served the Tenant a 1 Month Notice to End Tenancy. He was not provided with the Tenant's forwarding address until he was served with the Tenant's application for dispute resolution which provided him the opportunity to make his application for dispute resolution in response.

The Tenant testified he entered into a verbal tenancy agreement effective March 1, 2008, not April 1<sup>st</sup>, and he could not recall if anything was put in writing. He confirmed that rent was \$510.00 towards the end of the tenancy and he paid the security deposit of \$247.50 in late February 2008. He confirmed that he vacated the rental unit by July 31, 2010 after receiving the 1 Month Notice to End Tenancy on June 30, 2010. The Tenant alleges he provided the Landlord with his forwarding address, in writing, at the end of July 2010. He did not provide evidence in support of this statement because he did not keep a copy of the piece of paper that he wrote his address on.

The Tenant is seeking monetary compensation for damage caused to his property by the Landlord. He stated that his CD evidence consists of numerous photos which show his damaged property. He claims the Landlord placed a television on his possessions in the storage area causing damage. He also alleges the Landlord stole his food, his driver's license, damaged two containers of windshield washer fluid, and a vehicle oil cap he had in the rental unit. He argues the Landlord admitted to his witness that he ate his food and damaged his property. When asked if he submitted proof to support the cost he incurred when he initially purchased these items the Tenant responded by saying he did not have the receipts, they are his things he does not go out and steal

them, that he always has these types of possessions and he already had these things so did not keep the receipts.

The Landlord responded saying the Tenants claims are just allegations and are not true. He has no evidence to support the Landlord damaged anything. He argued that the rental property has a shared laundry room, basement workshop, and storage room which are accessed not only by him but also the three to four tenants who occupy the upper duplex.

The Landlord began to review his application and stated that based on his statement of claim and evidence it is clear that his claim included a request for compensation for damage or loss and requested that his application be amended to include his request for loss of rent in the amount of \$525.00. The unit was not re-rented until October 1, 2010, at the higher rent of \$525.00; therefore the Landlord feels he is entitled to compensation for at least one of the months the unit remained vacant.

The Landlord referred to his evidence which included an affidavit from a potential tenant which confirms the unit was advertised and shown in the second week of July. The affidavit included reference to the condition of the room with the presence of dirty dishes, cobwebs, cockroaches, a foul odour, and numerous articles spread everywhere preventing him from seeing the floor. The Landlord stated he advertised the unit on the internet in mid June 2010. He is seeking a total amount of \$758.50 which consists of the \$525.00 for loss of rent plus \$233.50 for cleaning the room. He completed the work over a period of approximately eight hours where he washed the walls, window, and cleaned the carpet. He did not keep track of the exact dates he worked on the room and did not provide receipts for any costs incurred.

The Tenant responded stating that he is not of the opinion that the room was not cleaned. Rather he stated he did clean the room, washed the walls, carpet and cleaned out the storage area. He also cleaned the carpet either on July 8, 2010 or July 10, 2010 and referred to a receipt provided in his evidence for the rental of the carpet machine. He argued that he was not issued the notice to end tenancy until June 30, 2010 and questioned how the Landlord could have advertised the unit for rent in mid June. He claims his room was already cleaned by mid July so if someone did view it they would not have seen his possessions in the room at that time. He requested permission to resubmit his CD evidence numerous times throughout the hearing at which time I allowed the Tenant to describe the evidence contained on the CD's. He replied by

saying there were photos of his broken possessions and of his room after he had cleaned the carpet and the Landlord moved in a dirty vacuum and stained the carpet.

The hearing time was close to expiring so each party was given the opportunity to provide their final submissions. The Landlord stated that he had nothing further to add to his testimony and evidence. The Tenant stated that he left his room in better condition than how it was at the start of the tenancy. He stated that if there was any damage at the end it was “pre-existing damage”. The Tenant then began to go through his original testimony, at which time I asked the Tenant if he had any new or additional testimony to provide. He said he did and began to recite his previous testimony on two more occasions. At that point the hearing time was scheduled to expire so I gave the Tenant one final opportunity to provide new or additional testimony which he stated he did not have anything further. He then proceeded to request permission again to resubmit his evidence. The hearing was concluded at that time.

## Analysis

A “**tenancy agreement**” means an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a rental unit, use of common areas and services and facilities, and includes a licence to occupy a rental unit. After careful review of the evidence and testimony I find that based on a balance of probabilities the parties entered into a month to month tenancy effective March 1, 2008. In the absence of a written tenancy agreement or receipt to prove the date the security deposit was paid I find that on a balance of probabilities the security deposit was paid March 1, 2008.

Section 7(1) of the Act provides 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 the damage or loss which results. That being said, section 7(2) also requires that the party making the claim for compensation for damage or loss which results from the other’s non-compliance, must do whatever is reasonable to minimize the damage or loss.

The party applying for compensation has the burden to prove their claim and in order to prove their claim the applicant must provide sufficient evidence to establish the following:

1. That the Respondent violated the Act, Regulation, or tenancy agreement; and
2. The violation resulted in damage or loss to the Applicant; and
3. Verification of the actual amount required to compensate for loss or to rectify the damage; and
4. The Applicant did whatever was reasonable to minimize the damage or loss

## Landlord's application

The Landlord requested to amend his application to include his request for compensation for damage or loss under the Act, regulation or tenancy agreement. He indicated this request is support by his statement of claim and evidence, therefore the Tenant was made aware of the Landlord's request in the initial application and would not be prejudiced by the Landlord's request to amend the application. Based on the aforementioned and in the absence of any objection by the Tenant, I approved the Landlord's request to amend the application to include the request for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement.

The evidence supports this tenancy ended due to the Landlord issuing the Tenant a 1 Month Notice to End the Tenancy. The Act provides that a periodic tenancy may end either by a landlord issuing a 1 month notice for cause under section 47 of the Act or a tenant issuing the landlord one month notice to end the tenancy under section 45 of the Act. In the case of periodic tenancy agreements obligations under the tenancy agreement and Act for both parties cease on the effective date of the Notice to end tenancy. Therefore, the Tenant is not liable for rent payments after the effective date of the Notice. Based on the aforementioned I find the Landlord has provided insufficient evidence to prove his claim for loss of rent; therefore I hereby dismiss his claim of \$525.00 without leave to reapply.

Section 24(2) of Act states the right of a landlord to claim against a security deposit for damage to residential property is extinguished if the landlord does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations. Therefore the Landlord may not make a claim against the Tenant's security deposit.

Section 37 of the Act states that when a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean and undamaged except for reasonable wear and

tear. The Landlord provided evidence which speaks to the condition of the room in mid July 2010 when the Landlord showed it to a prospective tenant. This tenancy did not end until July 31, 2010 so the Tenant had not yet vacated the unit. Based on the aforementioned and in the absence of evidence in support of the condition of the room at the end of the tenancy, I find the Landlord provided insufficient evidence to support his claim for \$233.50 for cleaning expenses, without leave to reapply.

The Landlord has not been successful with his application; therefore I find he must bear the full cost of his application.

## **Tenant's application**

The tenant seeks compensation for damage or theft of his property. He testified that his CD evidence contained photos of his damaged property however there was no evidence to support the Landlord was the person who damaged or stole the Tenant's possessions. The evidence supports the tenants from the upper duplex had access to the laundry room, workshop area, and storage room. While the Tenant's possessions may have been damaged or stolen I find there is insufficient evidence to support this was the result of the Landlord breaching the Act, regulation, or tenancy agreement. Therefore I hereby dismiss the Tenant's claim of \$422.00, without leave to reapply.

After careful review of the testimony I find that on a balance of probabilities the Landlord did not receive the Tenant's forwarding address in writing until he was served with notice of the Tenant's application for dispute resolution.

Section 38(1) of the *Act* stipulates that if within 15 days after the later of: 1) the date the tenancy ends, and 2) the date the landlord receives the tenant's forwarding address in writing, the landlord must repay the security deposit, to the tenant with interest or make application for dispute resolution claiming against the security deposit. In this case the Landlord filed for dispute resolution November 12, 2010, within 15 days of receiving the Tenant's application which was filed on October 29, 2010.

Based on the above, I find that the Landlord has not failed to comply with Section 38(1) of the *Act* and the Landlord is not subject to Section 38(6) of the *Act* which states that if a landlord fails to comply with section 38(1) the landlord may not make a claim against the security and pet deposit and the landlord must pay the tenant double the security deposit.





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Having dismissed the Landlord's application for dispute resolution above, I hereby find the Tenant is entitled to the return of his security deposit of \$247.50 plus interest of \$3.10.

The Tenant has been partially successful with his application; therefore I award him recovery of \$25.00 of the filing fee.

**Monetary Order** – I find that the Tenant is entitled to a monetary claim as follows:

Return of the security deposit	\$247.50
Filing fee	<u>25.00</u>
<b>TOTAL AMOUNT DUE TO THE TENANT</b>	<b>\$275.60</b>

## Conclusion

I HEREBY DISMISS the Landlord's application, without leave to reapply.

A copy of the Tenant's decision will be accompanied by a Monetary Order for **\$275.60**. The order must be served on the respondent Landlord and is enforceable through the Provincial Court as an order of that Court.

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: January 06, 2011.

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Residential Tenancy Branch