



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNSD, FF, O

### Introduction

This hearing was convened by way of conference call in response to an application made by the tenant for return of all or part of the pet damage deposit, to recover the filing fee from the landlord for the cost of this application, and for return of rent and utilities paid to the landlord.

The tenant was represented at the hearing by an agent, who also called a witness. The agent testified that the landlord was served with the Tenant's Application for Dispute Resolution and notice of hearing documents by registered mail on July 23, 2011 and provided a tracking number as evidence of having sent the documents. I am satisfied that the landlord has been served in accordance with Section 89 of the *Residential Tenancy Act*. Despite being served, the landlord did not attend the hearing. The tenant's agent and witness both gave affirmed testimony.

### Issue(s) to be Decided

- Is the tenant entitled to return of all or part of the pet damage deposit or security deposit or double the amount of the pet damage deposit or security deposit?
- Is the tenant entitled to a monetary order for recovery of one month's rent and utilities?

### Background and Evidence

The tenant's agent testified that the tenant and the tenant's agent and the witness attended the rental unit in September, 2010 to view it as a perspective renter. At that time, another tenant was still residing in the rental unit, and the unit was very dirty, but the agent who showed the unit promised that it would be ready for a new renter on October 1, 2010. The tenant paid the landlord \$525.00 for rent, \$262.50 for a security deposit and \$50.00 to cover the first month's hydro and cable.

When the parties returned on October 1, 2010, the furniture of the previous tenant was gone, but the unit had not been cleaned and they could see that the linoleum in the

kitchen was ripped and held together with duct tape, and the living room carpet was also held in place with duct tape. Further, the unit smelled of sewer and the parties discovered that there was no toilet in the bathroom. No light fixtures were in the rental unit with the exception of a bare light bulb in the bedroom. The fridge also was not functional. The landlord's agent who showed the unit appeared surprised and asked the tenant to return in a few days and it would all be fixed. The tenant agreed, but upon returning on October 3, 2011, nothing had been done. The tenant did not move into the rental unit, but stayed with the tenant's agent and witness where the tenant lived prior to October 1, 2010, until such time that a more suitable apartment was located.

The tenant's agent spoke to the landlord asking for return of the rent, utilities and security deposit, but the landlord stated that if the tenant wanted a toilet, the tenant could install one and refused to return any of the money.

The tenant's agent sent a letter by registered mail to the landlord on October 5, 2010, which contained an address for the tenant on the envelope, asking for return of the money, but the letter was returned by the post office unclaimed by the landlord. The landlord was also sent the Tenant's Application for Dispute Resolution, notice of hearing and evidence by registered mail on July 23 2011, but was returned by the post office unclaimed by the landlord on August 12, 2011. That package contained a letter with the tenant's forwarding address. Further, the landlord's agent who showed the rental unit to the tenant was personally given the phone number and address of the tenant's parents on September 12, 2010 and was told that the tenant would be going to that address on October 3, 2010 when the tenant was unable to move into this rental unit.

The landlord has not returned any portion of the rent, utilities or security deposit and has not served the tenant with a Landlord's Application for Dispute Resolution claiming against the security deposit.

### Analysis

The *Residential Tenancy Act* states that a landlord must provide and maintain residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law and makes it suitable for occupation by a tenant. I find that the landlord is in breach of the *Act* by providing no toilet and no light fixtures, and the tenant was justified in the circumstances to refuse to move into the rental unit. The landlord has accepted money for rent, utilities and a security deposit, but has not met the obligations of a landlord with respect to a rental unit. Therefore, I find that the tenant is entitled to return of the rent and the utilities.

With respect to the security deposit, the *Act* states that a landlord must return a security deposit in full within 15 days of the later of the date the tenancy ends and the date the landlord receives a forwarding address for the tenant in writing, or apply for dispute resolution claiming against the security deposit within that 15 day period. If the landlord fails to do either, the tenant is entitled to double recovery of the security deposit. In this case, I am satisfied that the landlord or the landlord's agent had a forwarding address for the tenant on September 12, 2010. The landlord was also sent a registered letter on October 5, 2010 with a forwarding address on the envelope. The landlord did not claim the registered letter, however, the *Act* also states that documents served by registered mail are deemed to have been served 5 days after mailing. I find that the tenant has provided sufficient evidence to satisfy me that the landlord had a forwarding address in writing but failed to return the security deposit within 15 days. Therefore, the tenant is entitled to double recovery of the security deposit.

Since the tenant has been successful with this application, the tenant is also entitled to recovery of the \$50.00 filing fee for the cost of this application.

### Conclusion

For the reasons set out above, I hereby grant a monetary order in favour of the tenant, pursuant to Section 67 of the Residential Tenancy Act in the amount of \$1,150.00. This order is final and binding on the parties and may be enforced.

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: October 31, 2011.

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Residential Tenancy Branch