



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Dispute Codes:**

MNSD, MNDC, MNR, MND, FF

### **Introduction**

The hearing was convened to deal with an application by the tenant for the return of double the security deposit under the Act. The tenant was also seeking reimbursement for the \$50.00 fee paid for this application.

This Dispute Resolution hearing was also convened to deal with a cross application by the landlord for a monetary claim of \$3,900.00 for loss of rent due to the tenant ending the fixed term early and cleaning costs. The landlord was also seeking reimbursement for the \$50.00 fee paid for this application.

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

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

The issue to be determined based on the testimony and the evidence is whether or not the tenant is entitled to return of the security deposit under section 38 of the Act.

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

The landlord was seeking a monetary order and the issue to be determined, based on the testimony and the evidence, is whether the landlord is entitled to compensation under section 67 of the *Act* for loss of rent and cleaning costs.

**Burden of Proof:** The burden of proof was on the tenant to establish that the deposit was paid. The landlord had the burden of proof to show that compensation for damages and loss was warranted and supported by the evidence submitted.

Only the evidence and testimony relevant and material to the issues under dispute and the findings in this matter are described in this decision.

### **Background and Evidence**

The fixed term tenancy began on August 1, 2011 and was to expire on August 30, 2012. The rent was \$1,750.00 and a security deposit of \$875.00 was paid. The tenant

vacated the unit on October 30, 2011 and the parties both acknowledged that they had participated in a move-out condition inspection on November 1, 2011. However no copy of the move-in and move-out condition inspection reports nor of the fixed term tenancy agreement were in evidence.

The tenant testified that, after they left, they sent the landlord a letter requesting the return of the security deposit on November 8, 2011 but received no reply. The tenant testified that the landlord had not returned the tenant's security deposit within fifteen days and, in fact, the landlord has not returned these funds to date. The tenant is therefore seeking a refund of double the deposit, pursuant to the provisions in section 38 of the Act.

The landlord disputed that he had ever received the tenant's written forwarding address at all and stated that this was the reason he did not file for monetary compensation until December 9, 2011. The landlord testified that, once he received the tenant's application that was filed on December 5, 2011 finally supplying their new address, he applied immediately.

The landlord testified that the tenant had suddenly abandoned the unit on November 1, 2011 without giving any written notice to move out at all. The landlord testified that, although the tenant had paid rent until the end of October, the lack of proper advanced notice caused him to suffer a loss of \$1,750.00 rent for the month of November 2011 and \$1,750.00 rent for the month of December 2011.

The landlord's position is that the tenant had moved out prior to the expiry of the fixed term without even giving the landlord a full month Notice to vacate, thereby depriving the landlord of the opportunity to re-rent the unit in time to avoid a loss.

The tenants did not dispute that they left the unit prior to the end of the fixed term, but stated that the landlord was aware that they intended to vacate due to a persistent vermin problem that was left unaddressed by the landlord, despite repeated complaints. The tenant testified that the landlord had knowingly rented the unit to them without revealing the extent of this serious problem. The tenant testified that when they complained, the landlord stated that the rodents were a natural occurrence with a rural property of this nature. The landlord also tried to assure them that these rats were not a health hazard as they were merely "roof rats" and pointed out that the animals would not be living inside the unit, but tended to stay within the walls and crawl spaces. The tenant testified that in response to their initial complaints, the landlord made an ineffectual effort to address the infestation by using chicken wire to block their access. However, the rats continued to be a major issue.

The tenants found that the landlord or someone employed by the landlord had placed toxic rat poison in the unit. The tenant testified that they contacted an extermination specialist who advised them that the use of this particular poison would result in the rodents dying and decaying within the walls or other inaccessible areas of the rental unit. The tenant testified that they and guests who visited detected a putrid odour in the rental unit that they felt could be explained by this data.

The tenant testified that they had several discussions with the landlord and in October he offered to allow them to move into the “upper cottage” on the property and asked if he could show their unit to prospective renters.

The tenant testified that the landlord then rented the cottage to other people shortly thereafter. The tenant testified that they also discovered that the landlord had placed rental advertisements to re-rent their unit in a posting on October 8, 2011. The tenant pointed out that this would confirm their position that the landlord was well aware that they would be vacating the premises if he didn’t resolve the rat problem.

The landlord argued that he did take action to eradicate the rats by doing research and speaking to professionals. However, the landlord did not submit any evidence to verify that a pest control specialist had ever been on contract to fumigate the rental unit after the report of the rat problem.

The landlord offered to submit the evidence that a pest control specialist was involved , but this request was denied as the Residential Tenancy Rules of Procedure require that all evidence be submitted and served on the other party 5 days in advance of the hearing. I found that there was not sufficient justification to adjourn the hearing on the basis that the landlord had neglected to submit his evidence.

The landlord also disputed the tenant's allegation that he was adequately notified of their intent to vacate and explained that he had merely advertised for new tenants for their unit in October “just in case” they suddenly decided to leave. According to the landlord it was a due diligence measure to avoid a loss of income. The landlord’s position is that the tenant is clearly required to furnish one month written notice to vacate, and these tenants violated the Act by not doing. The landlord stated that this noncompliant action was the cause of the landlord’s loss of rental income, which he feels gives him the right under section 7 of the Act to claim against the tenants.

### **Analysis: Tenant’s Application**

The tenant made application for the return of the \$875.00 security deposit and section 38 of the Act deals with this issue. 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 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.

The landlord was in possession of the tenant's security deposit held in trust on behalf of the tenant at the time that the tenancy ended. I accept the tenant's testimony that they had provided their forwarding address to the landlord in a letter sent on November 8, 2011, deemed to be served in 5 days which would fall on November 13, 2011. I find that the landlord was required to either return the deposit or make an application for dispute resolution within the following 15 days. However, the landlord's application for dispute resolution was not processed until December 9, 2011, beyond the fifteen-day deadline.

Section 38(6) provides that, if a landlord does not act within the above deadline, the landlord; (a) may not make a claim against the security deposit or any pet damage deposit, and; (b) must pay the tenant double the amount of the security deposit.

Based on the above, I find that the tenant is entitled to receive double the \$875.00 security deposit for entitlement to a total refund of \$1,750.00.

### **Analysis: Landlord's Application**

In regard to the landlord's claim for monetary damages, an applicant's right to claim damages from the other party is covered under, Section 7 of the Act which 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 of , and order a party to pay, compensation to the other party.. 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 landlord, 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.

I find that the evidence and testimony of both parties clearly establishes that the tenant did violate the tenancy agreement and the Act by moving out without giving proper written notice under the Act.

However, I accept the tenant's testimony that the landlord and tenants had engaged in discussions during which the tenant gave the landlord an ultimatum that, either the rat problem be eradicated or they would be forced to move for health reasons. I accept the testimony that the landlord was aware that the tenant would likely be moving out as evidenced by his action in advertising the anticipated vacancy of their unit and offering them alternate accommodation.

I find that the landlord's failure to properly address what appears to be a serious vermin problem was a violation of section 32 of the Act which imposes responsibilities on the landlord to provide and maintain residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law, having regard to the age, character and location of the rental unit to make it suitable for occupation by a tenant. I do not accept the landlord's allegation that rats are an inevitable part of country living and that the "roof rats" in question would not compromise the tenant's health and safety.

Given the above, I find that, despite the tenant's noncompliance with the Act by failing to give written notice and by ending a fixed term tenancy early, element 2 of the test for damages has not been sufficiently met by the landlord, because I find that the landlord was at least partially responsible for the failure of this tenancy and the tenant's decision to vacate early. It is clear that the tenant's decision to give up their home was due to the fact that landlord did not comply with the Act in certain respects either.

Accordingly, I find that the Landlord's claim for loss of rent for November and December 2011 must be dismissed.

**Conclusion**

Based on the testimony and evidence presented during these proceedings, I find that the tenant is entitled to compensation of \$1,800.00 including \$1,750.00 for double the security deposit and the \$50.00 cost of filing the application. I grant the tenant a monetary order in the amount of \$1,800.00. This order must be served on the landlord by registered mail or in person and may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

Based on the testimony and evidence presented during these proceedings hereby dismiss the landlord's application 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: February 15, 2012.

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Residential Tenancy Branch