



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDC, MNSD, FF

### Introduction

This hearing dealt with cross Applications for Dispute Resolution.

The Tenant has applied for the return of double the security deposit and to recover the filing fee for the Application.

The Landlord has applied to keep all or part of the security deposit, for money owed or compensation under the Act or tenancy agreement and to recover the filing fee for the Application.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Issue(s) to be Decided

Is the Tenant entitled to the return of double his security deposit?

Is the Landlord entitled to monetary compensation from the Tenant?

### Background and Evidence

This tenancy began on January 1, 2011, with the parties entering into a written tenancy agreement on May 8, 2011. The Tenant paid the Landlord a security deposit of \$350.00 on April 1, 2011. The rental unit is in the basement of the Landlord's residential home. The Landlord testified that she and her spouse live upstairs.

The Tenant testified that the Landlord did not do either incoming or outgoing condition inspection reports.

Toward the end of August 2011, the Tenant gave the Landlord notice he was vacating the rental unit on October 1, 2011. The Tenant testified he paid the Landlord rent until October 1, 2011. The Tenant had moved out of the rental unit completely by September 27, 2011, however, the evidence of both parties is that the Tenant did not reside in the rental unit for most of the month of September 2011.

The Tenant testified he sent the Landlord the forwarding address to return the security deposit to by registered mail on October 20, 2011. The Tenant did not agree the Landlord could keep any of his security deposit. The Tenant filed his Application on November 14, 2011.

The Tenant claims \$700.00 for return of double his security deposit.

The Landlord filed her claim on January 23, 2012.

The Landlord alleges that the Tenant used powdered detergent for his laundry, which caused the septic tank to back up into the rental unit and flood it with septic waste. The Landlord testified she informed the Tenant in writing at the end of the tenancy she would not be returning his security deposit.

The Landlord alleges she informed the Tenant at the outset of the tenancy he was not to use powdered detergent for laundry due to the septic tank. The tenancy agreement sets out that the laundry facilities were available to the Tenant from 10 a.m. to 10 p.m. The agreement is silent as to the type of detergent to use or to the septic tank.

The Landlord claims the Tenant caused \$17,000.00 in damage to the rental unit.

The Landlord is claiming against the Tenant for \$320.00 for clearing the septic pipe, \$500.00 for her insurance deductible, \$800.00 for increased premiums, and \$700.00 for loss of rent.

In evidence the Landlord has provided a receipt from a septic service company dated October 25, 2011, for \$112.00 for a technician to attend and assess the septic tank. A note on the invoice states, "inlet plugged with phosphate". [Reproduced as written.] The Landlord testified that the septic system flooded the rental unit the first time on September 6, 2011, and a second time on September 11, 2011. The Landlord testified that the entire line to the septic tank had to be augered out.

The Landlord provided a copy of an invoice from a restoration company for a \$500.00 deductible, the tenancy agreement and several photographs sent in by facsimile.

The Tenant denies he was told by the Landlord at the outset of the tenancy to not use powdered detergent. He testified that around the start of the tenancy he had used about three cups of powdered detergent for laundry before he was informed by the Landlord to not use this. He testified he stopped using powdered soap and only used liquid laundry soap following this.

The Tenant alleges that between August 27, 2011 and October 1, 2011, he only used the laundry facilities at the rental unit once, and at that time he used liquid soap. He testified he was washing towels he used for cleaning the rental unit prior to moving out. The Tenant also alleged there were problems with the septic system before he moved into the rental unit.

### Analysis

Based on the above, the evidence and testimony, and on a balance of probabilities, I find as follows:

### The Tenant's Claim

There was no evidence to show that the Tenant had agreed, in writing, that the Landlord could retain any portion of the security deposit, plus interest. There was also no evidence to show that the Landlord had applied for arbitration within 15 days of the end of the tenancy or receipt of the forwarding address of the Tenant, to retain a portion of the security deposit, plus interest.

Furthermore, by failing to perform incoming or outgoing condition inspection reports the Landlord extinguished the right to claim against the security deposit, pursuant to sections 24(2) and 36(2) of the Act.

Therefore, I find that the Landlord has breached section 38 of the Act. The Landlord is in the business of renting and therefore, has a duty to abide by the laws pertaining to Residential Tenancies.

The security deposit is held in trust for the Tenant by the Landlord. At no time does the Landlord have the ability to simply keep the security deposit because they feel they are entitled to it or are justified to keep it.

The Landlord may only keep all or a portion of the security deposit through the authority of the Act, such as an order from a Dispute Resolution Officer, or the written agreement of the Tenant. Here the Landlord did not have any authority under the Act to keep any portion of the security deposit. Therefore, I find that the Landlord is not entitled to retain any portion of the security deposit.

Having made the above findings, I must Order, pursuant to section 38 and 67 of the Act, that the Landlord pay the Tenant the sum of **\$750.00**, comprised of double the security deposit (2 x \$350.00) and the \$50.00 fee for filing this Application.

#### The Landlord's Claim

I find the Landlord has failed to prove the Tenant is responsible for the septic problem at the rental unit.

In a claim for damage or loss under the Act or tenancy agreement the party claiming for the damage or loss, here the Landlord, has the burden of proof to establish their claim on the civil standard, that is, based on a balance of probabilities.

To prove a loss and have the Tenant pay for the loss requires the Landlord to prove four different elements:

First proof that the damage or loss exists; secondly, that the damage or loss occurred due to the actions or neglect of the Respondent in violation of the Act or agreement; thirdly, to establish the actual amount required to compensate for the claimed loss or to repair the damage; and lastly proof that the claimant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

While I accept that the damage or loss occurred, I find the Landlord had insufficient evidence to prove the actions of the Tenant or his neglect caused the damage or loss.

On a balance of probabilities, the flood could have had other causes such as lack of maintenance of the septic system or use by other people in the residential property. I also find that there is no evidence to prove the Tenant used the laundry facility more than once in the month during which the two floods occurred. I find that even if the Tenant had used powdered soap this one time (which I do not accept), the Landlord has no evidence to prove that this one use would cause the entire line to become clogged and require it to be augered out.

Therefore, I dismiss the Landlord's claim without leave to reapply.

Conclusion

The Landlord's claim is dismissed without leave to reapply.

The Tenant is given a formal Order for \$750.00 and the Landlord must be served with a copy of this Order as soon as possible. Should the Landlord fail to comply with this Order, the Order may be filed in the Small Claims division of the Provincial Court and enforced as an Order of that Court.

This decision is final and binding on the parties, except as otherwise provided for under the Act, and 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 03, 2012.

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Residential Tenancy Branch