



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDC, MNSD, FF

### Introduction

This conference call hearing was convened in response to the tenant's application for a monetary order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement; for the return of double the amount of the security deposit; and to recover the filing fees associated with this application.

At the outset, the landlord requested an adjournment because she misplaced her documentary evidence when it had to be relocated because of a damaged wall. I am not prepared to accept that these circumstances were beyond the landlord's control; this explanation is not a valid reason to grant an adjournment. Further, the landlord's evidence pertains to a claim against the tenant for which she has yet to make an application for dispute resolution, and does not bear an impact on the landlord's ability to respond to the tenant's application for the return of the security deposit. Therefore I decline to grant an adjournment and the hearing will proceed.

### Issue(s) to be Decided

Is the tenant entitled to a Monetary Order, and for what amount?

Is the tenant entitled to the return of the security deposit as claimed?

Is the tenant entitled to recover the filing fee?

### Background and Evidence

Pursuant to a written agreement, the tenancy started on August 17<sup>th</sup>, 2009 and ended when the tenant was served notice to end tenancy on November 30<sup>th</sup>, 2011 for landlord's use of the property. The rent was \$900.00 per month and the tenant paid a security deposit of \$450.00.

The tenant testified that he did repairs to the toilet and some painting of the unit at a cost of \$160.16. He also stated that the landlord imposed an illegal late fee of \$12.55 for late rent paid in June 2011, as "late fee" was not a material term of the tenancy agreement.

The tenant submitted a monetary claim as follows:

- |                                |           |
|--------------------------------|-----------|
| - Double the security deposit: | \$ 900.00 |
| - Refund for late fee:         | \$ 12.55  |
| - Refund for repairs:          | \$ 160.16 |
| - Total:                       | \$1072.71 |

The landlord testified that she received the landlord's forwarding address; however stated that she has evidence that the tenant does not deserve the return of the security deposit. She stated that the toilet was working when the tenancy started; she said that she agreed that the tenant could paint the unit but did not agree to reimburse the tenant. Concerning the late fee, the landlord states that the rental agreement does include a late fee clause, but she does not remember the amount.

The tenant provided a copy of the contractor's invoice, and the contractor's handwritten note to the tenant stating that the landlord told his brother that she would pay for the work.

In his documentary evidence, the tenant also provided a copy of his written forwarding address to the landlord dated November 22<sup>nd</sup>, 2011.

### Analysis

Section 38(1) of the *Residential Tenancy Act* provides that the landlord must return the security deposit or apply for dispute resolution within 15 days after the later of the end of the tenancy and the date the landlord received the tenant's forwarding address in writing.

Section 38(6) of the *Residential Tenancy Act* provides in part that if a landlord does not comply with his statutory obligation to return the security deposit within 15 days, the landlord must pay the tenant double the amount of the deposit.

In this matter the landlord acknowledged receipt in writing of the tenant's forwarding address, but the security deposit was not returned and the landlord did not apply for dispute resolution as required by statute. Therefore the tenant is entitled to the return of double the amount of the security deposit.

Section 60(1) of the Act provides also for the landlord to make an application for dispute resolution over matters related to the tenancy within two years after the tenancy ends. The landlord is entitled to claim monetary compensation against the tenant for any damages alleged, and to submit evidence at that time.

Concerning the claim for late fee and the repairs; the burden of proof was on the tenant to establish his claim. To do this, the tenant must provide sufficient evidence that the landlord violated the Act, regulation, or tenancy agreement; that the violation resulted in damage or loss to the tenant; and that the actual amount required for compensation of that loss is verifiable.

Concerning the refund for repairs; the Act provides certain provisions for reimbursement of emergency repairs. These repairs were not emergencies. The tenant did not provide evidence of an agreement whereby the landlord agreed in writing to reimburse the tenant, except for the contractor's written interpretation of a conversation between the landlord and the contractor's brother. I do not find this is sufficient evidence to establish that the landlord violated the Act, or agreed in writing to reimburse the tenant. Therefore I dismiss this aspect of the tenant's claim.

Concerning the late fee in June 2011; the tenant provided only Page 1 of 5 of the tenancy agreement. In the absence of the complete agreement before me I cannot review the clause in question. I find insufficient evidence to assess the merit of this claim and whether to allow a refund. I also take into consideration that the tenant did not inform himself nor did he apply to resolve this aspect of the claim when it occurred nearly a year ago. Therefore I dismiss this aspect of the tenant's claim.

### Conclusion

The tenant established a claim of \$900.00. Since the tenant was partially successful, I award the partial recovery of the filing fee in the amount of \$25.00. Pursuant to Section 67 of the Act, I grant the tenant a Monetary Order totalling \$925.00. This Order may be registered in the Small Claims Court and enforced 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: April 12, 2012.

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Residential Tenancy Branch