



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDC, FF, O

### Introduction

This hearing was convened in response to an application by the Tenant pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. A Monetary Order for compensation for loss – Section 67; and
2. An Order to recover the filing fee for this application - Section 72.

The Tenant and Landlord were each given full opportunity to be heard, to present evidence and to make submissions.

### Preliminary Matter

At the onset of the Hearing, the Landlord asked that the Tenant’s application be dismissed as he was not served with the Notice of Adjourned Hearing. The Landlord states that he received notification of the Hearing from the Residential Tenancy Branch. The Landlord states that he did receive an empty envelope from the Tenant by registered mail. The Tenant states that the registered mail sent to the Landlord was in relation to a different matter and that the RTB informed the Tenant that service of the Notice of Adjourned Hearing did not require service on the Landlord so the Tenant did not serve the Notice. Given that the Landlord did receive Notice of the Hearing, is in attendance and considering that the Hearing was adjourned originally in order for the Landlord to attend, I deny the Landlord’s request to dismiss the Tenant’s application.

The Landlord states that an application has been made for damages to the unit and is scheduled for June 2012. The Landlord requests that this application be joined with the present application as the subject matter is the same. Given that the dispute to be

determined at this Hearing is a different matter and not connected to the dispute over damages to the unit, I deny the Landlord's request.

Issue(s) to be Decided

Is the Tenant entitled to the monetary amounts claimed?

Background and Evidence

The tenancy started in May 2012 and ended on December 15, 2012. Rent payable at the onset of the tenancy was \$1,100.00. The Tenant states that after the end of the tenancy and following a Hearing in January 2012, the Landlord cashed a rent cheque of the Tenant's. This cheque was dated January 1, 2011 but was not negotiated during the tenancy as the Tenant paid the January 2011 rent by cash. The Tenant provided copies of the cheque that was endorsed and cleared on January 23, 2012 along with the banking statement for January 2011. The Landlord does not deny cashing the old cheque and states that this was done to cover losses associated with damage to the unit.

The Tenant states that following the end of the tenancy the Landlord has been harassing the Tenants by attempting to locate the Tenant's residence through contact with the Tenant's facebook friends. The Landlord states that as the Tenant's address provided for service at the last Hearing is not the address where the Tenant's reside, the Landlord was only trying to locate the Tenants.

Analysis

Section 7 of the Act provides that where a landlord does not comply with the Act, regulation or tenancy agreement, the landlord must compensate the tenant for damage or loss that results. Given the undisputed evidence of the Parties, I find that the Landlord cashed a cheque of the Tenants for a period of the tenancy during which rent had been paid and that the Landlord did not have any right to these monies when the cheque was cashed. I find therefore that the Tenant is entitled to the amount of

\$1,100.00. I also find that the Tenants are entitled to recovery of the fining fee for a total entitlement of \$1,150.00.

As the harassment claimed by the Tenant commenced following the end of the tenancy, and is not in relation to the Act, regulation or tenancy agreement, I find that the Act does not apply to the dispute and I dismiss this part of the Tenant's application.

### Conclusion

I **grant** the Tenants an order under Section 67 of the Act for the amount of **\$1,150.00**. If necessary, this order may be filed 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: May 08, 2012.

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Residential Tenancy Branch