



# 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 the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- authorization to obtain a return of all or a portion of his security deposit pursuant to section 38; and
- authorization to recover his filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions and to cross-examine one another. Both parties provided a list of witnesses for this hearing. The tenant said that he had not spoken to his proposed witnesses as he did not wish to compromise their evidence. None of his witnesses were aware of his intention to ask them to participate as witnesses at this hearing. The first two of his witnesses, one of whom was also identified as a potential witness for the landlord, were not available at the telephone numbers provided. Since the evidence that his other witnesses might offer were based on limited visits to his residence and they were not expecting to be called as witnesses for this hearing, I found little value in attempting to contact them. It was not necessary to contact the landlord's other witness as this witnesses' furnace inspection occurred over five months after the end of this tenancy.

The landlord confirmed that he received a copy of the tenant's dispute resolution hearing package by courier on May 18, 2012. I am satisfied that the tenant served his hearing package and that the parties served one another with their evidence packages.

At the commencement of the hearing, I noted that one of the issues identified in the tenant's application was considered as part of my April 18, 2012 hearing and decision regarding the landlord's application for dispute resolution. In that decision, I issued a final and binding monetary Order in the landlord's favour in the amount of \$697.50. This monetary Order allowed the landlord to recover \$5.00 in unpaid rent for January 2012, \$675.00 for loss of rent for February 2012, \$307.50 for loss of rent for March 2012, the landlord's \$50.00 filing fee, and to retain the tenant's \$340.00 security deposit in partial

satisfaction of the landlord's monetary award. As such, I advised the parties that my decision regarding allowing the landlord to retain the tenant's security deposit was final and binding. Since this matter has already been considered in my April 18, 2012 decision, the tenant's application to recover his security deposit is *res judicata*, meaning that it cannot be reconsidered as part of a new application by the tenant.

#### Issues(s) to be Decided

Is the tenant entitled to a monetary Order for losses arising out of this tenancy? Is the tenant entitled to recover his filing fee from the landlord?

#### Background and Evidence

This one-year fixed term tenancy commenced on November 1, 2011. Monthly rent of \$675.00 was payable in advance on the first of each month. The tenant was responsible for paying 50% of the utility costs for this two unit rental property. On the basis of my April 18, 2012 decision, the landlord has been allowed to retain the tenant's \$340.00 security deposit paid on November 1, 2011. The tenant vacated the rental unit on January 31, 2012.

In my April 18, 2012 decision, I noted that the tenant attempted during the April 18, 2012 hearing to obtain a monetary award of \$4,115.00. In my earlier decision, I advised the tenant that he would need to file his own application for dispute resolution if he intended to seek a monetary award for losses or a retroactive reduction in his rent.

The tenant's current application for a monetary Order of \$4,165.00 is essentially for the same items identified by the tenant at the last hearing, plus the requested recovery of his \$50.00 filing fee. The tenant listed these items as follows in a document he submitted for consideration at the April 18, 2012 hearing and resubmitted to support his current application:

<b>Item</b>	<b>Amount</b>
Recovery of 3 Month's Rent (November 2011 – January 2012 – 3 x \$675.00 = \$2,025.00)	\$2,025.00
Recovery of 3 Month's Utilities (3 x \$300.00 = \$900.00)	900.00
Return of Security Deposit	340.00
Moving Fee	250.00
Loss of Work due to Cold (5 days @ \$15.00 per hour x 8 hours = \$600.00)	600.00

Recovery of Filing Fee	50.00
<b>Total Monetary Award Requested</b>	<b>\$4,165.00</b>

The tenant testified that he and his former roommate vacated the rental premises because the landlord refused to repair items that were deficient. He testified that the landlord refused to install a bedroom door on his roommate's room. He also testified that there was no exhaust fan in the bathroom in the rental unit and the landlord refused to install one. The tenant testified that the landlord failed to provide an exhaust fan in the stove of this rental unit. He testified that there was heat in the rental unit but that it was not sufficient to heat the rental unit properly. He also maintained that the fireplace was not functional during his tenancy.

The landlord testified that the tenant knew that there was no door on one of the bedrooms when he committed to this fixed term tenancy and told the landlords that this did not present a problem for him. The landlord said that the previous tenant had used this room as a living room and that the tenant said that this arrangement was acceptable to him. The landlord also said that some of the issues noted by the tenant had not been raised with the landlords prior to the end of this tenancy.

### Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, a Dispute Resolution Officer may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must 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 other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

The tenant's application for the recovery of rent covers the entire rent he paid for the three- month period when he occupied the rental unit. At the hearing, he confirmed that he did not send written complaints notifying the landlord that he was requesting a reduction in rent for the lack of services and facilities provided until after his rent became due in January 2012. The tenant said that when the landlord did not repair the items he promised to fix within one week, the tenant decided on January 10, 2012 to end his tenancy well in advance of the scheduled October 31, 2012 end date for this fixed term tenancy.

I find that the tenant has provided insufficient evidence to demonstrate that the landlord failed to provide services and facilities that were agreed to as part of this tenancy agreement. In coming to this decision, I give weight to the landlord's undisputed

testimony that the joint move-in condition inspection was thorough and gave the tenant an adequate opportunity to identify anything in the rental unit that was deficient. If the missing door in one of the rooms in this basement suite was an issue that needed correcting, the move-in condition inspection report provided an opportunity to the tenant to identify this as an item that required action by the landlord. The failure of the tenant to note anything that needed fixing in the joint move-in condition report lends credence to the landlord's claim that the tenant was fully aware of the condition of the premises at the time he rented this suite. The tenant identified a number of issues that arose during the course of this tenancy, most of which I find to have been relatively minor in nature. The tenant provided insufficient evidence to demonstrate that these issues were of such significance that he is entitled to a retroactive reduction in his rent. The tenant's failure to make written requests to the landlord for repairs or improvements to the amenities calls into question his claim for a monetary award. I dismiss the tenant's application for a monetary award for reduced rent and utilities in its entirety without leave to reapply as I find that the tenant has not demonstrated any entitlement to a monetary award for these items.

In coming to this determination, I note that the landlord provided a number of letters, including those from other tenants in the property in support of the landlord's assertion that the landlord was providing adequate heating, venting and a fireplace during this tenancy. The tenant maintained that he had spoken to the author of a June 3, 2012 letter, the upstairs tenant (LE). The tenant claimed that this tenant told him that the contents of the June 3, 2012 letter were not accurate and that Tenant LE had not signed the letter entered into written evidence by the landlord. I find that the tenant's claim that the landlord had submitted altered or fraudulent evidence was at odds with the tenant's own earlier claim that he had not spoken with any of those who he had listed as witnesses for this hearing (including LE). The tenant did not submit any written statement from Tenant LE discrediting the statements attributed to Tenant LE in the June 3, 2012 letter submitted into written evidence by the landlord. I find on a balance of probabilities that the best evidence available to me with respect to Tenant LE's evidence is the June 3, 2012 letter and not the tenant's account of what Tenant LE told him about that letter. Although the June 3, 2012 letter is not a sworn affidavit, I find that it can be relied on to a limited extent as an accurate description of Tenant LE's interaction with the tenant and with this rental property.

I find that the tenant is not entitled to reimbursement of his moving expenses for a tenancy that he ended many months before the scheduled end to this fixed term tenancy. In coming to this determination, I note that the tenant did not supply any receipts for his moving expenses.

Similarly, I dismiss the tenant's claim for lost time at work as he provided no documentation from a health care professional to confirm that he missed time from work as a result of the landlord's alleged failure to provide adequate heating to this rental unit. He provided few details regarding this part of his claim. The tenant conceded during the hearing that there was heat in the rental unit, but that it was insufficient for his needs. Without more substantive information from the tenant, I find insufficient basis to compensate the tenant for his alleged loss of wages arising out of the landlord's failure to address his concerns.

As the tenant has been unsuccessful in his application, he bears responsibility for his filing fee.

#### Conclusion

I dismiss the tenant's application 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: July 16, 2012

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Residential Tenancy Branch