



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      Landlord: MND, MNR, MNSD, FF  
Tenant: MNR, MNDC, MNSD, FF

### Introduction

This hearing dealt with the cross Applications for Dispute Resolution with both parties seeking a monetary order.

The hearing was conducted via teleconference and was attended by the landlord and the tenant.

At the outset of the hearing the tenant confirmed that he had not served any evidence to either the landlord or the Residential Tenancy Branch (RTB).

The tenant also stated that he had not received any evidence from the landlord. The landlord testified that she served her evidence to the tenant on December 3, 2012 by delivering it herself to the location where the tenant resides; that she bang loudly and that when no one answered she left it in the mailbox.

The tenant testified that he had moved on November 15, 2012 but had not informed either the RTB or the landlord. The tenant submitted the landlord had his email address she could have contacted him and/or served her evidence by email.

As the landlord had no idea the tenant had moved and since email is not an allowable method of service under the *Act*, I find the landlord had no way of knowing the tenant had moved. In addition, as the tenant had filed an Application for Dispute Resolution of his own in which he used his previous address I find he was required to provide the landlord and the RTB with his new address and his failure to do so was a deliberate act to avoid service of the landlord's evidence for both her Application and his.

I also find that it would be prejudicial to the landlord to adjourn this hearing as a result of the tenant's deliberate attempt to avoid service. The hearing proceeded.

### Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to a monetary order for unpaid rent; for damage and cleaning; for all or part of the security deposit and to recover the filing fee from the tenant for the cost of the Application for Dispute Resolution, pursuant to Sections 37, 38, 67, and 72 of the *Residential Tenancy Act (Act)*.

It must also be decided if the tenant is entitled to a monetary order for compensation for emergency repairs; for damage or loss; for return of the security deposit and to recover the filing fee from the landlord for the cost of the Application for Dispute Resolution, pursuant to Sections 33, 38, 67, and 72 of the *Act*.

### Background and Evidence

The parties agree the tenancy began on April 15, 2012 as a month to month tenancy for the monthly rent of \$575.00 due on the 1<sup>st</sup> of each month with a security deposit of \$287.50 paid. The parties agreed the tenancy ended when the tenant vacated the rental unit on June 30, 2012.

The landlord submits that the tenant failed to pay rent for the month of June 2012 because he had replaced a patio door in the rental unit with a used door and side window. The landlord submits he did not have authorization from her to do so but that her son had agreed to the change and had been informed by the tenant it would cost \$400.00 to do the work.

The landlord states the tenant then provided her a bill in the amount of \$675.00 that included \$300.00 for his labour. The landlord states she offered to deduct the amount of receipted expenses (\$344.00) from his rent but he stated that she owed him the full amount and he refused to pay her rent.

The landlord also submits that when the tenant vacated the property he attended a move out condition inspection on July 1, 2012 and signed the move out condition inspection with the condition of the unit as described in the report and allowing the landlord to retain the security deposit in full.

The landlord submits that in total it cost her \$240.00 for the costs associated with cleaning the rental unit plus \$120.00 for carpet cleaning and cleaning supplies. In addition it required \$60.00 worth of material and labour to complete the repairs required because the tenant had never completely finished installing the door.

The tenant seeks \$6,000.00 in total for the return of his security deposit; the work he had completed on the door installation and the removal of his truck; camper and wood burning stoves from the back of the property.

The tenant submits that the landlord did not return his deposit; that she did not remove a sofa left on the property; and that the landlord must have removed his truck and other belongings at the back of the property because they were left there after the end of the tenancy and she had asked him to move it several times including advising him that she was trying to have them towed away.

The tenant said he reported the missing items to the police and they advised him that he should contact the local towing companies. The tenant testified that he did not do what the police advised him to do because it was too much work.

### Analysis

To be successful in a claim for compensation for damage or loss the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss; **and**
4. Steps taken, if any, to mitigate the damage or loss.

Section 33 of the *Act* allows a tenant to have emergency repairs completed if the emergency repairs are needed; the tenant has made at least 2 attempts to phone the landlord or their agent and following those attempts the tenant has given the landlord reasonable time to make the repairs.

The section includes defining emergency repairs as: urgent; necessary for the health or safety of anyone or for the preservation or use of the residential property, and are made for the purpose or repairing major leaks in pipes or the roof; damaged or blocked water or sewer pipes or plumbing fixtures; the primary heating system; damaged or defective locks that give access to a rental unit; or the electrical systems.

There is no evidence before me that the “repairs” made by the tenant were urgent; necessary for the health or safety of anyone or for the preservation or use of the residential property or for repairing damaged or defective locks that give access to a

rental unit. As such, I dismiss the tenant's claim for costs associated with any emergency repairs.

As to any amounts the tenant believes are owed to him for the installation of the door and side window I find that this was an arrangement outside of the tenancy and therefore is not the result of a violation of the *Act*, regulation or tenancy agreement. I dismiss this portion of the tenant's Application.

As the tenant did not provide any testimony disputing that he did not pay rent for the month of June 2012 I find the tenant did not pay rent as was required under the tenancy agreement in the amount of \$575.00 and the landlord is entitled to compensation for this amount.

Section 37 of the *Act* requires a tenant who is vacating a rental unit to leave the unit reasonably clean, and undamaged except for reasonable wear and tear, and give the landlord all keys or other means of access that are in the possession and control of the tenant and that allow access to and within the residential property.

Based on the condition inspection report, signed by the tenant, and photographs provided by the landlord I find the tenant failed to leave the rental unit in a condition that was reasonably clean and that due to his installation there was work required by the landlord to complete the installation.

I find the landlord has established the value of the work required in her submission to be in the amount of \$420.00 and she is entitled to this amount in compensation from the tenant.

Section 38(1) of the *Act* stipulates that a landlord must, within 15 days of the end of the tenancy and receipt of the tenant's forwarding address, either return the security deposit, less any amounts mutually agreed upon in writing or file an Application for Dispute Resolution to claim against the security deposit. Section 38(6) stipulates that should the landlord fail to comply with Section 38(1) the landlord must pay the tenant double the security deposit.

As the tenant signed the Condition Inspection Report agreeing the landlord could retain the security deposit I find the landlord has the right under Section 38(1) of the *Act* to retain it. I therefore dismiss this portion of the tenant's Application.

In relation to the tenant's claim for compensation for his truck; camper and woodstoves, I find the tenant has failed to provide any evidence at all that indicates the landlord has these items or that she had them removed.

Even if he had provided sufficient evidence to establish that she had removed them, by his own testimony he has made no effort, at the recommendation of the police, to attempt to find the items and as such he taken no steps to mitigate his loss. For these reasons I dismiss the balance of the tenant's Application.

### Conclusion

I find the landlord is entitled to monetary compensation pursuant to Section 67 in the amount of **\$1,045.00** comprised of \$575.00 rent owed; \$420.00 for cleaning and repairs; and the \$50.00 fee paid by the landlord for this application.

I order the landlord may deduct the security deposit and interest held in the amount of \$287.50 in partial satisfaction of this claim. I grant a monetary order in the amount of **\$757.50**.

This order must be served on the tenant. If the tenant fails to comply with this order the landlord may file the order in the Provincial Court (Small Claims) and be 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: December 14, 2012.

---

Residential Tenancy Branch