



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Dispute Codes:**

MNSD, MND, MNDC, FF

### **Introduction**

This hearing was convened in response to cross-applications by the parties for dispute resolution. The landlord filed on February 22, 2013 pursuant to the *Residential Tenancy Act* (the Act) for Orders as follows;

1. A monetary Order for damage and loss
2. An Order to recover the filing fee for this application (\$50) - Section 72.

The tenant filed on February 18, 2013 pursuant to the Act for Orders as follows:

1. An Order for return of *double* security deposit - Section 38
2. An Order to recover the filing fee for this application (\$50) - Section 72.

Both parties attended the hearing and were given opportunity to settle their dispute, present relevant evidence, and make relevant submissions. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present. The parties each acknowledged receiving all the evidence of the other. Only relevant evidence will be considered in the Decision.

### **Issue(s) to be Decided**

Is the landlord entitled to the monetary amounts claimed?

Is the tenant entitled to the monetary amounts claimed?

Each party bears the burden of proving their respective claims.

### **Background and Evidence**

The hearing had benefit of a copy of the tenancy agreement and a series of photographs submitted by the landlord. The undisputed evidence in this matter is as follows. The tenancy began February 01, 2012 as a written tenancy agreement. There was no **move in** condition inspection report completed. At the outset of the tenancy the

landlord collected a security deposit in the amount of \$1100.00 which the landlord retains its entirety in trust. During the tenancy the payable rent was in the amount of \$2200.00 due in advance on the 1<sup>st</sup>. day of each month. The tenant vacated January 31, 2013 at which time the parties agree the tenant provided the landlord with their forwarding address in writing. There was no **move out** condition inspection report completed.

The landlord claims that they and the tenant were mutually present in the rental unit on January 31, 2013 but the landlord chose not to conduct an inspection – choosing to conduct one later. The landlord claims the tenant had previously been apprised the landlord would conduct any cleaning. The landlord testified that after the tenant vacated they noted the rental unit had some deficiencies including damage to the kitchen cabinet doors, damage to the stove burner top and that the unit required 14 new light bulbs. The landlord provided some photographs of the purported damages to the cabinets and stove. The tenant disputed all of the landlord's claims. The tenant testified that all of the damage the landlord claims was present in the suite when they moved in and all was the same when they vacated, other than normal wear and tear.

The tenant claims they provided the landlord with their forwarding address on January 31, 2013 but has yet to receive their security deposit.

### **Analysis**

The onus is on the respective parties to prove their claims, on balance of probabilities. On preponderance of the evidence submitted, and on balance of probabilities, I find as follows:

#### **Landlord's claim**

I find Section 7 of the Act states as follows:

#### **Liability for not complying with this Act or a tenancy agreement**

- 7** (1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.
- (2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

In this matter, for a claim of damages to be successful, the landlord must prove the damage exists, prove the damage was due solely because of the actions of the tenant in violation to the Act, and must show how they mitigated or attempted to minimize the potential loss. In the absence of a condition inspection report for the start and end of the tenancy, I find that while the landlord has provided some evidence that the rental unit currently contains some deficiencies, they have failed to prove that any of the

deficiencies were the result of the actions or conduct of the tenant. Effectively, the landlord has not met their onus to prove their claims. As a result, **I dismiss** the landlord's claim for damage loss. Effectively, **I dismiss** the landlord's application in its entirety, without leave to reapply.

Tenant's claim

**Section 38(1)** of the Act, in part, provides as follows

38(1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of

38(1)(a) the date the tenancy ends, and

38(1)(b) the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one of the following:

38(1)(c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;

38(1)(d) file an application for dispute resolution to make a claim against the security deposit or pet damage deposit.

I find that after the landlord received the tenant's forwarding address in writing on January 31, 2013 they filed for dispute resolution to make a claim against the security deposit on February 22, 2013. I find that the landlord failed to repay the security deposit, or to make an application for dispute resolution within 15 days of receiving the tenant's forwarding address in writing and is therefore liable under section 38(6) which provides:

38(6) If a landlord does not comply with subsection (1), the landlord

38(6)(a) may not make a claim against the security deposit or any pet damage deposit, and

38(6)(b) **must pay the tenant double the amount of the security deposit**, pet damage deposit, or both, as applicable.

The landlord currently holds the original security deposit of \$1100.00 and was obligated under section 38 to return this amount. The amount which is doubled is the original amount of the deposit. As a result I find the tenant has established an entitlement claim for **\$2200.00** and is further entitled to recovery of the **\$50** filing fee for a total entitlement of **\$2250.00**.

**Conclusion**

I grant the tenant an order under section 67 for the sum of **\$2250.00**. If necessary, this order may be filed in the Small Claims Court and enforced as an order of that Court.

**This Decision is final and binding on both parties.**

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 13, 2013

---

Residential Tenancy Branch