



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNSD, MNDC

### Introduction

This hearing was convened by way of conference call in response to the tenant's application for a Monetary Order to recover the security deposit and for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement.

The tenants and the landlord's agent attended the conference call hearing, gave sworn testimony and were given the opportunity to cross examine each other on their evidence. The tenant provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing, and the tenant was permitted to provide additional evidence after the hearing had concluded. All evidence and testimony of the parties has been reviewed and are considered in this decision.

### Issue(s) to be Decided

- Is the tenant entitled to a Monetary Order to recover double the security deposit?
- Is the tenant entitled to a Monetary Order for money owed or compensation for damage or loss?

### Background and Evidence

The tenants testify that this tenancy started on July 06, 2012; rent was \$585.00 per month and they paid a security deposit of \$292.50. The landlord's agent testifies that this tenancy started on August 01, 2012; rent was \$575.00 per month and the tenants paid a security deposit of \$285.50. As neither party has provided a copy of the tenancy agreement in evidence the tenants were permitted to provide additional evidence after the hearing had concluded from the Ministry who paid the rent for the tenants to determine how much the rent was. The evidence provided from the tenant from the Ministry of Social Development, and signed by the landlord, shows that rent for this unit is \$575.00 per month and the tenant paid a security deposit of \$287.50.

The tenant (IG) testifies that no inspection report of the unit was done at the start of the tenancy. A walk through was done with the landlord and the tenant signed an agreement outside the door of the unit. The tenant testifies that at the end of the tenancy they could not find the landlord to do the move out inspection and no written notice was given for an inspection. The tenant testifies that they gave the landlord notice to end the tenancy in writing. A copy of this Notice has been provided in evidence and is dated November 07, 2012. This Notice informs the landlord that the tenants will be vacating the rental unit no later than December 02, 2012 and the tenant apologises for the late notice. The tenant testifies that they moved from the unit on December 02, 2012 however the landlord has not returned the tenants security deposit. The tenant testifies that a forwarding address was given to the landlord in the notice to end tenancy with a request to return the security deposit to that address. The tenant therefore seeks to recover double the security deposit from the landlord to the sum of \$585.00.

The tenant testifies that throughout the tenancy the unit had no heat. The tenant testifies that heat was included in the tenants rent and despite many complaints to the landlord the heat was not restored until the last week of the tenancy. The tenant testifies that the landlord came to the unit but only drained the hot water tank. The landlord kept saying the heat would be fixed in two weeks but it was not repaired. The tenant testifies

that they had to purchase a small electric heater and use heat from the oven to heat the unit. The tenant has provided one copy of a Hydro bill and seeks compensation for the higher Hydro usage of \$200.00.

The tenant testifies that at the end of the tenancy they left a small two drawer filing cabinet in the unit. This cabinet contained a jewelry box with four to five rings including the tenant's mother's engagement and wedding rings, four to five necklaces, three watches, pendants for necklaces and earrings. The cabinet also contained a play station console, 10 to 12 games, two remotes, dream catchers and some clothes. The tenant testifies that she asked her grandmother to collect the filing cabinet from the landlord. The tenant testifies that her grandmother called the landlord in the first week of December to say she was not able to collect the filing cabinet until the following week and would call the landlord back. The tenant testifies that when her grandmother called the landlord back on January 18, 2013 to collect the filing cabinet the lady on the phone informed the tenant's grandmother that the filing cabinet had been put in the garbage. The tenant testifies that the value of the items in the filing cabinet has been estimated at \$1,050.00 and the tenant seeks to recover this amount from the landlord.

The landlords agent disputes the tenants claim for double the security deposit; The landlords agent testifies that at the start of the tenancy a walk through was done of the unit with the tenants and an inspection report was completed as this is the landlords standard practise to do and one is always attached to the tenancy agreement. The landlord's agent agrees that this inspection report has not been provided in evidence. The landlord's agent testifies that at the end of the tenancy the tenants were informed that a move out inspection was required but agrees that no inspection was done as they could not get hold of the tenants. The landlord's agent testifies that a written notice for inspection was put on the tenant's door. The landlord's agent agrees that the landlord has not applied to keep the security deposit.

The landlord's agent disputes the tenants claim for compensation for having no heat. The landlord's agent testifies that the tenants unit did have heat. Heat is provided by the

hot water boiler to vents. Occasionally an air pocket prevents heat to one vent and the landlord went to the tenants unit and drained the hot water tank to remove the air pocket. The tenants would only have been inconvenienced for a short while. The landlord's agent testifies that the unit is one of 28 units in this building and the landlords also live in the building. The boiler serves all the units and if it was not working then the landlords would have noticed that there was no heat and the landlords would have received complaints from other tenants. The landlord's agent testifies that the boiler was also upgraded last summer and both boilers ran simultaneously for a period of time.

The landlord's agent disputes the tenants claim for compensation for items in a filing cabinet. The landlord's agent testifies that the tenants abandoned a filing cabinet in the unit. This was removed to the landlord's storage area, as is the landlord's practise, to prepare a unit for new tenants. The landlord's agent testifies that the tenant's grandmother did contact the landlord about collecting the filing cabinet and said she would collect it the next week. The landlord stored the filing cabinet for two months and it was then disposed of. The landlord's agent testifies that the filing cabinet only contained some dirty laundry and did not contain a jewellery box, a play station or any other items the tenant claims. The tenant's grandmother contacted the landlord on February 15, 2013 to collect the cabinet but by then it had already been disposed of. The landlord's agent testifies that they call the Salvation Army to come and take any abandoned items but as this filing cabinet had no value the Salvation Army did not want it so it went to the garbage.

### Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties. With regard to the tenants claim for double the security deposit; I have conflicting testimony concerning the move in and move out inspection reports. When one persons testimony contradicts that of the other then the landlord should have provided copies of the move in inspection report if it had been completed with the tenants at the start of the tenancy and proof that the tenants were given at least two

opportunities to attend a move out inspection at the end of the tenancy. As no evidence has been provided by the landlord to corroborate the landlord's agent's claims; it is my decision that the move in inspection report was not completed as specified under s.23 of the Act and the landlord has extinguished their right to file a claim against the security deposit for damages.

Section 38(1) of the *Act* says that a landlord has 15 days from the end of the tenancy agreement or from the date that the landlord receives the tenants forwarding address in writing to either return the security deposit to the tenant or to make a claim against it by applying for Dispute Resolution. If a landlord does not do either of these things and does not have the written consent of the tenant to keep all or part of the security deposit then pursuant to section 38(6)(b) of the *Act*, the landlord must pay double the amount of the security deposit to the tenant.

Based on the above and the evidence presented I find that the landlords did receive the tenants forwarding address in writing on November 14, 2012 and I find the tenancy ended on either December 02 or December 04, 2012. As a result, the landlord had until December 17 or December 19, 2012 to return the tenants security deposit or apply for Dispute Resolution to make a claim against it for a loss of rental income. I find the landlords did not return the security deposit and have not filed an application for Dispute Resolution to keep the deposit. Therefore, I find that the tenant has established a claim for the return of double the security deposit to the amount of \$575.00 pursuant to section 38(6)(b) of the *Act*.

With regard to the tenants claim for money owed or compensation for damage or loss; the tenants seek to recover compensation of \$200.00 for additional Hydro costs incurred because the landlord failed to provide heat to the unit. I have applied a test used for damage or loss claims to determine if the claimant has met the burden of proof in this matter:

- Proof that the damage or loss exists;
- Proof that this damage or loss happened solely because of the actions or neglect of the respondent in violation of the Act or agreement;
- Verification of the actual amount required to compensate for the claimed loss or to rectify the damage;
- Proof that the claimant followed S. 7(2) of the Act by taking steps to mitigate or minimize the loss or damage.

In this instance the burden of proof is on the claimant to prove the existence of the damage or loss and that it stemmed directly from a violation of the agreement or contravention of the Act on the part of the respondent. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. Finally it must be proven that the claimant did everything possible to address the situation and to mitigate the damage or losses that were incurred.

The landlord's agent disputes the tenants claim. The burden of proving a claim lies with the applicant and when it is just the applicant's word against that of the respondent that burden of proof is not met. The tenant has provided no other corroborating evidence to proof that the tenants were without heat during their tenancy due to the actions or neglect of the landlord in violation of the *Act* or agreement or that they had to use an electrical heater and the oven to heat the unit. Therefore this section of the tenant's claim is denied.

I have applied the same test for the tenants claim for belongings missing that were allegedly stored in a filing cabinet. The tenants have listed a number of items of jewelry and other belongings but have provided no evidence to show these items were stored in this filing cabinet, the tenants have therefore failed to meet the test to proof that the damage or loss exists. Furthermore the tenants have provided no evidence to show that these belongings had a combined value of \$1,050.00. Therefore it is my decision that the tenants have not met the burden of proof and this section of their claim is denied.

Conclusion

I HEREBY FIND in partial favor of the tenant's monetary claim. A copy of the tenant's decision will be accompanied by a Monetary Order for \$575.00. The order must be served on the respondent and is enforceable through the Provincial Court as an order of that Court.

The reminder of the tenant's application is dismissed 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: May 09, 2013

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Residential Tenancy Branch

