



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **Decision**

**Dispute Codes:** MNDC, MNSD, FF

## **Introduction**

This Dispute Resolution hearing was convened to deal with an Application by the tenant for a monetary order for money owed or compensation for damage or loss under the Act and an order for the return of the security deposit retained by the landlord.

At the outset of the hearing the tenant disclosed that he had previously made an application against the landlord and received a monetary order, but because he had misspelled the name of the landlord, the order against the person named as respondent was not enforceable through Small Claims Court. The tenant is now seeking a monetary order against the correct individual with the respondent's name properly spelled.

The applicant was present and participated in the hearing. Despite being served with the Notice of Hearing documents by registered mail sent on April 26, 2013, the respondent did not appear and the hearing was therefore conducted in the respondent's absence.

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

- Is the tenant entitled to the return of the security deposit under section 38 of the Act?
- Is the tenant entitled to monetary compensation under section 67 of the Act?

## **Background and Evidence**

Submitted into evidence was a written statement from the tenant with the details of the claims. No evidence was submitted by the landlord

The tenancy began approximately 3 years ago and ended on March 1, 2012. Rent started out at \$1,100.00 but was lowered to \$900.00 during the tenancy. A \$550.00

security deposit was paid. A hand-written tenancy agreement signed only by the landlord was in evidence.

The tenant testified that the landlord had been provided with his written forwarding address before the end of April 2012, but had never returned the tenant's security deposit.

The tenant testified that he had been deprived of water for 8 days straight in January 2012 and was not able to live comfortably in the suite during that period of time. The tenant is claiming compensation of \$270.00 for devalued tenancy due to the loss of water.

## **Analysis**

### **Claim for Damages and Loss**

In respect to an Applicant's right to claim damages from another party, Section 7 of the Act states that 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. Section 67 of the Act grants a dispute Resolution Officer the authority to determine the amount and to order payment under these circumstances.

It is important to note that in a claim for damage or loss under the Act, the party claiming the damage or loss bears the burden of proof and the evidence furnished by the Applicant must satisfy each component of the test below:

#### **Test For Damage and Loss Claims**

1. Proof that the damage or loss exists,
2. Proof that this damage or loss happened solely because of the actions or neglect of the Respondent in violation of the Act or agreement,
3. Verification of the actual amount required to compensate for the claimed loss or to rectify the damage, and
4. Proof that the claimant followed section 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 tenant, to 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 landlord.

Based on the evidence and testimony, I accept the tenant's undisputed testimony and find that the tenant has established that the unit was deprived of water for 8 days in January 2012. I find that the tenant has met the burden of proof to support compensation under the Act and set the amount of the rent abatement at 50% for the 8 days and I find that the tenant is entitled to compensation totalling \$120.00.

#### Claim for Return of Security Deposit

In regard to the return of the security deposit, I find that section 38 of the Act states that, within 15 days after the later of the day the tenancy ends, and the date the landlord receives the tenant's forwarding address in writing, the landlord must either repay the security deposit or pet damage deposit to the tenant with interest or make an application for dispute resolution claiming against the security deposit or pet damage deposit.

The Act states that the landlord can only retain a deposit if the tenant agrees in writing the landlord can keep the deposit to satisfy a liability or obligation of the tenant, or if, after the end of the tenancy, the director orders that the landlord may retain the amount.

I find that the tenant did not give the landlord written permission to keep the deposit, nor did the landlord make application for an order to keep the deposit.

Section 38(6) provides that If a landlord does not comply with the Act by refunding the deposit owed or making application to retain it within 15 days, the landlord may not make a claim against the security deposit or any pet damage deposit, and must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

I find that the tenant's security deposit was \$550.00 and that the landlord did not comply with the Act and arbitrarily retained the security deposit without written permission from the tenant and without an order to do so. Accordingly I find that the tenant is entitled to be paid double the security deposit for compensation in the amount of \$1,100.00.

Based on the testimony and evidence presented during these proceedings, I find that the tenant is entitled to compensation of \$1,270.00, comprised of \$120.00 rent abatement for 8 days without water, \$1,100.00, representing double the security deposit and the \$50.00 cost of the application. This order must be served on the Respondent and may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court if not paid.

**Conclusion**

The tenant is successful in the application and is granted a monetary order for a refund of double the amount of the security deposit and for a retro-active rent abatement.

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: June 17, 2013

---

Residential Tenancy Branch