



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding MACDONALD COMMERCIAL REAL ESTATE SERV. LTD.  
and [tenant name suppressed to protect privacy]

## **Dispute Codes:**

MNSD, MNDC, MNR, FF

## **Introduction**

This Dispute Resolution hearing was convened to deal with applications from both the landlord and the tenant. The tenant's application was for the return of the security deposit under the Act and monetary compensation in damages for having to pay for gas utilities, move-in fee, cost of an alternate mailbox and compensation for no garbage removal.

The landlord's application was seeking a monetary order for loss of rent, cleaning costs and advertising costs.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained. The participants had an opportunity to submit documentary evidence prior to this hearing, and the evidence has been reviewed. The parties were also permitted to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the affirmed testimony and relevant evidence that was properly served.

## **Issues to be Decided for the Tenant's Application**

Is the tenant entitled to the return of the security deposit under section 38 of the Act?

Is the tenant entitled to damages under section 7 of the Act?

## **Issues to be Decided for the Landlord's Application**

Is the landlord entitled to compensation for damages or loss under section 7 of the Act?

## **Background and Evidence**

The fixed term tenancy began on September 1, 2012 for a one-year period to expire on August 1, 2013. The rent was \$1,675.00 per month and a security deposit of \$837.50 was paid. The tenant stated that they vacated the rental unit April 30, 2013.

The landlord testified that the tenant terminated the fixed term tenancy prior to the expiry date and, as a result, the landlord suffered a loss of one month revenue.

The tenant argued that they had provided a tenant willing to take over their lease, for the landlord to consider. According to the tenant, the landlord did not follow up on this referral. The tenant submitted a copy of a communication from the potential renter stating that, when they contacted the landlord about taking over the lease, they were told the suite was already re-rented.

The landlord stated that another tenant would have been considered, however the tenant did not provide sufficient data about the potential renter.

The landlord testified that \$120.07 was spent in advertising the unit and this is being claimed. The landlord testified that a new tenant was found for the month of June 2013.

The landlord is claiming compensation for this amount and is also seeking \$1,675.00 for the loss of revenue for May 2013.

The landlord testified that the rental unit was not left reasonably clean and the landlord spent \$225.00 for the cleaning.

The tenant argued that they had fully cleaned the suite and even hired a carpet cleaner. The tenant submitted documentary evidence confirming professional carpet cleaning had been completed. The tenant testified that the carpet was likely soiled while showing the suite to potential renters, after the tenants had already vacated.

In regard to the tenant's monetary claim, the tenant testified that they are owed a refund of \$837.50 for the security deposit paid in trust to the landlord at the start of the tenancy.

The tenant testified that they are also claiming reimbursement of \$562.68 spent to hookup the gas utility. The tenant submitted a copy of the invoice confirming this expenditure. The tenant testified that the tenancy agreement shows that their rent includes the cost of natural gas. A copy of the tenancy agreement was submitted into evidence showing that gas is included in the tenant's rent.

The tenant stated that they are also seeking compensation for payment of a \$200.00 move-in fee wrongfully collected by the landlord.

The landlord testified that the tenant was required, under the strata rules that they signed, to pay \$200.00 for move-in charges. No copies of the strata rules or form K were in evidence. The landlord did not submit a copy of a receipt verifying that these funds were paid to the strata management.

The tenant disputed the charge on the basis that they never got a copy of the strata rules and had never agreed to pay the move-in fees. The tenant also pointed out that they did not move any furniture into the suite as it was already furnished.

The tenant testified that the landlord failed to give them a key to the mailbox and they were therefore forced to incur a charge of \$214.00 for arranging to use an offsite postal box. The tenant is claiming reimbursement for this amount.

The tenant testified that the landlord failed to provide a key for the garbage disposal area and the tenant therefore endured the inconvenience of having to make alternate arrangement to dispose of their refuse. The tenant values the loss of this amenity at \$400.00, which is being claimed.

In support of the claim for monetary compensation for the lack of a mailbox key and garbage key, the tenant had submitted a copy of a communication they had sent to the landlord, in which they were requesting the keys to the mailbox, garbage area and a guest parking pass.

The landlord disputed the tenant's allegation that the mailbox key was never given to the tenant. The landlord testified that the tenant likely set up a postal box for their own purposes in anticipation of their move to a newly purchased home and not because they were denied access to the mailbox in the complex. The landlord testified that the key to access garbage was also provided to the tenant.

#### Analysis – Landlord's Monetary Claim

In regard to the costs being claimed by the landlord, I find that an applicant's right to claim damages from another party is covered by section 7 of the Act which states that if a landlord or tenant fails to comply with the Act, the regulations or 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 authority to determine the amount and order payment under the 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,
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 landlord to prove their losses.

I find that the landlord's claim for loss of rent has met all elements of the test for damages. The tenant did violate the agreement by terminating the tenancy before the fixed term had expired and I accept that this resulted in a loss of \$1,675.00 revenue for the month of May 2013.

With respect to the landlord's claim for cleaning costs, I find that section 37(2) of the Act states that, when a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.

To determine whether or not the tenant had complied with this requirement, I find that this can best be established through a move out condition inspection report containing both the landlord's and the tenant's signatures.

Conducting move-in and move out condition inspection reports are a requirement of the Act under section 23(3) and section 35 of the Act and places the obligation on the landlord to complete the condition inspection report in accordance with the regulations. Both the landlord and tenant must sign the condition inspection report after which the landlord must give the tenant a copy of that report in accordance with the regulations.

In addition to the above, section 20(1) states that a condition inspection report completed under section 23 or 35 of the Act must contain certain specific information including the following:

*“(j) appropriate space for the tenant to indicate agreement or disagreement with the landlord's assessment of any item of the condition of the rental unit and contents, and any additional comments;*

*(k) the following statement, to be completed by the tenant:*

*I, .....*

*Tenant's name*

*[ ] agree that this report fairly represents the condition of the rental unit.*

*[ ] do not agree that this report fairly represents the condition of the rental unit, for the following reasons:*

.....  
.....  
.....  
..... “

I find that the document put into evidence as a “Move Out Condition Inspection Report”, created by the landlord, does not feature a section that complies with the above.

Although the tenant did sign the form, I do not accept the landlord's position that the tenant's signature at the bottom of the landlord's form functions to confirm that the tenant agreed with the content of the report. In fact, I find that the tenant did not agree with the notations made by the landlord on the report. I find that the tenant was deprived of the opportunity to make that point clear on the form due to deficiencies in the inspection report form. I find that the form used for this inspection report is not compliant with the Residential Tenancy Regulations and this fact affects the evidentiary weight of this document.

Based on the preponderance of evidence, I accept the tenant's testimony that they disagreed with the landlord's report and that they left the rental unit in a reasonably clean condition. I also find that the landlord did not submit sufficient evidence to meet the test for damages with respect to proving the expenditure. For the reasons above, I find that the portion of the landlord's claim relating to the \$225.00 cost of cleaning must be dismissed.

In regard to the landlord's claim for advertising costs of \$120.07, I find that this expense would likely have been incurred at the end of the fixed term in August. In any case, I find that the landlord has not sufficiently proven the expenditure. I therefore find that this portion of the landlord's monetary claim has not met the test for damages and must be dismissed.

#### Analysis: Tenant's Application

In regard to the tenant's monetary claim for a refund of their \$837.50 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 to the tenant with interest or make an application for dispute resolution claiming against the security deposit.

In this instance, the landlord seeks to keep the deposit and made an application to do so within the required 15 days from the end of the tenancy. Pursuant to the Act, these

funds are held in trust for the tenant and the deposit may be applied against a debt or monetary award, granted to the landlord should the landlord's claim succeed.

With respect to the tenant's request for a refund of the \$200.00 collected by the landlord for the move in and move out strata fees, I find that the landlord has not submitted adequate proof that the tenant agreed to these charges as part of their tenancy, nor that these funds were ever paid to the strata by the landlord. Accordingly, I find that the tenant is entitled to be reimbursed for the \$200.00 they paid.

In regard to the claim for reimbursement of \$562.68 paid to the gas company, I find that, based on terms in the tenancy agreement gas is included in the rent being charged, and the tenant is not responsible for this cost under the tenancy agreement. I find that the tenant is entitled to monetary compensation of \$562.68 to reimburse the tenant for the payment made.

In regard to the monetary claim of \$214.00 for the cost of an alternate mailbox, I find that the evidence shows that the tenant did request the mailbox key in writing and there it appears that there was no response from the landlord. I find that the landlord did not submit any documentation into evidence to confirm that that the mailbox key was ever delivered after the tenant's request. For this reason, I accept that the tenant never did get the requested mailbox key from the landlord. Accordingly, I find that the tenant is entitled to be reimbursed \$214.00 for the cost.

I also accept that the tenant did not receive the requested key for the garbage disposal area. However, I find that the tenant is not entitled to the \$400.00 in compensation as the tenant has not proven that they lost this amount. However, I grant the tenant a rent abatement for the lack of garbage services for 8 months in the amount of \$20.00 per month for total compensation of \$160.00.

Based on the testimony and evidence I find that the landlord is entitled to be compensated in the amount of \$1,675.00 for loss of revenue for the May 2013.

I find that the tenant is entitled to total compensation of \$2,024.18, comprised of \$837.50 for the refund of their security deposit, \$200.00 for the move-in/move-out fees charged by the landlord, \$562.68 for the paid gas bill, \$214.00 for the mailbox, \$160.00 for lack of garbage services and the \$50.00 cost of the application.

In setting off the two amounts, I find that the tenant is entitled to the remainder in the amount of \$349.18.

I hereby grant a monetary order in favour of the tenant for \$349.18. This order must be served on the Respondent and may be filed in the Supreme Court, (Small Claims), and enforced as an order of that Court.

The remainder of both the landlord's and the tenant's applications are dismissed without leave to reapply.

**Conclusion**

Both the landlord and the tenant are partially successful in their monetary claims and after setting off the two amounts, the tenant is granted a monetary order for \$349.18.

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: August 19, 2013

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Residential Tenancy Branch