



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDC, MNSD, FF

### Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- authorization to obtain a return of her security deposit pursuant to section 38; and
- authorization to recover her filing fee for this application from the Respondent pursuant to section 72.

The landlord/Respondent did not attend this hearing, although I waited until 11:15 a.m. in order to enable her to connect with this teleconference hearing scheduled for 11:00 a.m. The tenant/Applicant attended the hearing and was given a full opportunity to be heard, to present evidence and to make submissions. The tenant testified that she sent the Respondent a copy of her dispute resolution hearing package on May 31, 2013 by registered mail. She also said that she sent the Respondent a copy of her written evidence package by registered mail on August 23, 2013. She provided the Canada Post Tracking Number for the registered mailing of the hearing package and entered into written evidence a copy of the Canada Post Tracking Number and Customer Receipt for the registered mailing of her evidence package. I find that the Respondent was deemed served with the above packages on the fifth day after their registered mailings. I am satisfied that the tenant served these packages to the Respondent in accordance with sections 89(1) and 90 of the *Act*.

### Issues(s) to be Decided

Is the tenant entitled to a monetary award for damages and losses arising out of this tenancy? Is the tenant entitled to a monetary award for the return of her security deposit? Is the tenant entitled to a monetary award equivalent to the amount of her security deposit as a result of the Respondent's failure to comply with the provisions of section 38 of the *Act*? Is the tenant entitled to recover the filing fee for this application from the Respondent?

### Background and Evidence

The tenant testified that she moved into the rental unit with the Respondent on December 1, 2012. The Respondent prepared and signed a written Residential Tenancy Agreement (the Agreement) with the owners of this rental unit on November 14 and 15, 2012. Although the tenant was listed as a co-tenant on the Agreement with the owners, the tenant said that the Respondent withheld this document from her and was the sole signatory as the tenant in the Agreement. The Agreement between the Respondent and the owners of this rental unit was for a periodic tenancy commencing on December 1, 2012. In the three pages of the Agreement that the tenant was able to obtain after her own tenancy ended, the security deposit was shown as \$1,000.00.

The tenant testified that she entered into an oral agreement to share this rental unit with the Respondent that took effect on December 1, 2012. The tenant's share of the monthly rent was set at \$900.00, payable in advance directly to the Respondent on the first of each month, plus one-half of the utilities for this rental. The tenant provided written evidence that she opened cable television and hydro accounts for this rental unit and was to have been reimbursed by the Respondent for these expenses. The tenant testified that she paid the Respondent a \$500.00 security deposit on or about December 3, 2012.

The tenant testified that on March 15, 2013, she gave the Respondent her notice to end this tenancy by May 1, 2013. She said that she paid all of her April 2013 rent to the Respondent, and vacated the rental unit by April 21, 2013. She provided written evidence and sworn oral testimony that she gave the Respondent her forwarding address in writing by mail on May 7, 2013.

The tenant's application for a monetary award of \$590.00 included a request for the return of her \$500.00 security deposit. She entered into written evidence a copy of the \$500.00 cheque provided to her by the Respondent on April 21, 2013, for the return of her security deposit. This cheque dated April 20, 2013 was returned to her as N.S.F. when she attempted to negotiate it at her bank. The tenant also requested the recovery of one-half of the cable television and hydro bills that she entered into written evidence. These amounts totalled \$44.60 (i.e.,  $(\$65.68 + \$23.51) \times 50\% = \$44.60$ ) for cable television and \$50.41 (i.e.,  $(\$67.22 + \$33.60) \times 50\% = \$50.41$ ) for the latter portions of this tenancy.

### Analysis

Although the circumstances of this tenancy arrangement were somewhat unclear, I find that there is sufficient written evidence to substantiate the tenant's claim that she was a tenant of the Respondent, who was in turn a tenant of the owners of this rental unit as

per the Agreement. The tenant's name is identified on the Agreement as a tenant, despite the fact that the tenant did not sign the Agreement. I also find that the copy of the non-negotiable \$500.00 cheque from the Respondent to the tenant dated April 30, 2013 supports the tenant's claim that she did pay the Respondent a security deposit of \$500.00, one-half of the security deposit paid by the Respondent to the owners of the rental unit. I am fully satisfied that the Respondent was the tenant's landlord for the purposes of the *Act* and that the tenant paid her monthly rent to the Respondent. I am also satisfied that the tenant took out a cablevision account and a hydro account for these utilities for this rental unit.

Section 38(1) of the *Act* requires a landlord, within 15 days of the end of the tenancy or the date on which the landlord receives the tenant's forwarding address in writing, to either return the security deposit or file an Application for Dispute Resolution seeking an Order allowing the landlord to retain the deposit. If the landlord fails to comply with section 38(1), then the landlord may not make a claim against the security deposit, and the landlord must return the tenant's security deposit plus applicable interest and must pay the tenant a monetary award equivalent to the original value of the security deposit (section 38(6) of the *Act*). With respect to the return of the security deposit, the triggering event is the latter of the end of the tenancy or the tenant's provision of the forwarding address. Section 38(4)(a) of the *Act* also allows a landlord to retain an amount from a security deposit if "at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant."

In this case, I find that there is no evidence that the landlord/Respondent provided the tenant with a negotiable payment for the return of her security deposit. There is undisputed evidence that the cheque the Respondent gave to the tenant to return the tenant's security deposit could not be cashed. There is no evidence that the landlord/Respondent applied to the Residential Tenancy Branch for authorization to retain any portion of the tenant's security deposit. There is also no evidence that the tenant gave the Respondent her written authorization to retain any portion of the security deposit.

Consequently, I find that the landlord has not returned the security deposit within 15 days of receipt of the tenant's forwarding address, which is deemed to have been provided on May 12, 2013, the fifth day after its mailing. The tenant is therefore entitled to a monetary order amounting to double the deposit with interest calculated on the original amount only. No interest is payable over this period.

I also find that the tenant has provided sufficient undisputed written evidence and sworn testimony to substantiate her entitlement to a monetary award of \$95.01 for the Respondent's share of utilities for this tenancy that have not been paid to the tenant.

As the tenant has been successful in this application, I allow the tenant to recover her \$50.00 filing fee from the Respondent.

### Conclusion

I issue a monetary Order in the tenant's favour under the following terms which allows the tenant to recover her original security deposit plus a monetary award equivalent to the value of her security deposit as a result of the Respondent's failure to comply with the provisions of section 38 of the *Act*, as well as the tenant's losses for unpaid utilities and the tenant's filing fee for this application:

<b>Item</b>	<b>Amount</b>
Return of Security Deposit	\$500.00
Monetary Award for Landlord's/Respondent's Failure to Comply with s. 38 of the <i>Act</i>	500.00
Unpaid Utilities (\$44.60 = \$50.41 = \$95.01)	95.01
Filing Fee	50.00
<b>Total Monetary Order</b>	<b>\$1,145.01</b>

The tenant is provided with these Orders in the above terms and the Respondent must be served with a copy of these Orders as soon as possible. Should the Respondent fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders 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: September 06, 2013

---

Residential Tenancy Branch

