



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNR, MNSD, MNDC, FF

### Introduction

This hearing was convened in response to applications by the landlords and the tenant.

The landlords' application is seeking orders as follows:

1. For a monetary order for unpaid rent;
2. For a monetary order for compensation for loss or damage under the Act?
3. To keep all or part of the security deposit; and
4. To recover the cost of filing the application.

The tenant's application is seeking orders as follows:

1. For a money order for money owed under the Act; and
2. Return of double the security deposit.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

The parties confirmed receipt of all evidence submissions and there were no disputes in relation to review of the evidence submissions

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

### Preliminary matter

On July 26, 2013, the tenant filed an application for dispute resolution, which that application was heard on August 27, 2013, and a decision was rendered on August 28, 2013. In the tenant's application they claimed compensation for an illegal rent increase, at the hearing the arbitrator heard evidence from both parties, and found the landlord

did not impose an illegal rent increases. The tenant's application was dismissed without leave to reapply.

On December 3, 2013, the tenant filed a subsequent application for dispute resolution, in that application the tenant is claiming an illegal rent increase, which that claim is scheduled to proceed on today's date.

However, I find that due to section 77(3) of the Act and the legal principal of Res judicata, I cannot grant the tenant's request to hear the issue of the illegal rent increase as this matter was already heard and decided upon at the hearing of August 28, 2013.

Further at the hearing on August 27, 2013, the arbitrator found the landlord was in possession of the tenant's forward address and the landlord was order that they were with required to return the deposit or file an application for dispute resolution within 15 days of the date of that decision (August 28, 2013). The landlord's application was filed on September 11, 2013. As a result, I find the landlord filed their application within the time limited provided as a result the tenant is not entitled to double the security deposit.

#### Issues to be Decided

Are the landlords entitled to a monetary order for unpaid rent?  
Are the landlords entitled to monetary compensation for damages?  
Is either party entitled to the security deposit?

#### Background and Evidence

The tenancy began on May 7, 2013. Rent in the amount of \$500.00 was payable on the first of each month. A security deposit of \$150.00 and a pet deposit of \$150.00 were paid by the tenant. The arbitrator at the hearing on August 27, 2013, found the amount of \$150.00 had been returned to the tenant. The tenancy ended on June 30, 2013.

The landlord testified that the tenant failed to pay all rent owed for May 2013. The landlord stated that the tenant deposited directly into their account the sum of \$355.15, which left a balance owing of \$144.85. Filed in evidence is a copy of the direct deposit.

The tenant testified that she had an agreement with the landlord that she could deduct medical expenses from her rent. The tenant stated she did not trust the landlord as he failed to provide rent receipt and decided to deposit the rent directly into his account. The tenant stated later the landlord told her that they were not paying for her medical expenses that she paid the balance of rent due in cash.

The landlord denied giving the tenant permission to deduct any amount from the rent. The landlord denied ever receiving the balance of rent due in cash.

### Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

In a claim for damage or loss under the Act or tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities.

To prove a loss and have one party pay for the loss requires the claiming party to prove four different elements:

- Proof that the damage or loss exists;
- Proof that the damage or loss occurred due to the actions or neglect of the Respondent in violation of the Act or agreement;
- Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
- Proof that the Applicant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

Where the claiming party has not met each of the four elements, the burden of proof has not been met and the claim fails. In this case, the landlord has the burden of proof to prove their claim.

Section 7(1) of the Act states that if a landlord or tenant does not comply with the Act, regulation or tenancy agreement, the non-comply landlord or tenant must compensate the other for damage or loss that results.

Section 67 of the Act provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

The parties have provided a different version of event, regarding unpaid rent. However, I prefer the evidence of the landlord over the tenant.

In this case, the evidence of the tenant was that she did not trust the landlord as they failed to provide rent receipts and made a partial payment of rent by direct deposit. I find if the tenant paid further rent to the landlord it would have been reasonable to provide that rent in the same manner to ensure she had a receipt. Rather, I find that it is likely the tenant withheld rent as they felt justified to recover a medical expense.

Therefore, based on the balance of probability I find the tenant failed to pay all rent owed. I find the landlords are entitled to recover unpaid rent in the amount of **\$144.85**.

I find that the landlords have established a total monetary claim of **\$194.85** comprised of the above described amount and the \$50.00 fee paid for this application.

I order that the landlords retain the balance of the deposits in the amount of \$150.00 in partial satisfaction of the claim and I grant the landlords an order under section 67 for the balance due of **\$44.85**.

This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

### Conclusion

The landlords are granted a monetary and may keep the security deposit in partial satisfaction of the claim and the landlords are granted a formal order for the balance due.

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: December 24, 2013

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Residential Tenancy Branch

