



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDC, MNR, MNSD, FF

### Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant for a monetary order for money owed or compensation under the Act, for the return of double the security deposit and to recover the cost of the filing fee from the landlord.

The tenant attended the hearing. As the landlord did not attend the hearing, service of the Notice of Dispute Resolution Hearing was considered.

The Residential Tenancy Branch Rules of Procedure states that the respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing.

The tenant testified the Application for Dispute Resolution, Notice of Hearing and all evidence was sent by registered mail on November 1, 2013, a Canada post tracking number was provided as evidence of service. The tenant stated the Canada post track history shows the landlord signed for the documents on November 8, 2013.

I find that the landlord has been duly served in accordance with the Act.

The tenant appeared gave affirmed testimony and was provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

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.

### Issues to be Decided

Is the tenant entitled to a monetary order for money owed under the Act?

Is the tenant entitled to the return of double the amount of the security deposit?

### Background and Evidence

The parties entered into a fixed term tenancy which began on February 1, 2013 and was to expire on February 1, 2014. Rent in the amount of \$1,000.00 was payable on the first of each month. A security deposit of \$500.00 was paid by the tenant.

The tenant claims as follows:

a.	Repairs to rental unit	\$ 200.00
b.	Electricity invoices	\$ 1,040.09
c.	Double the security deposit \$1,000 - \$500 received	\$ 500.00
d.	Filing fee	\$ 50.00
	<b>Total claimed</b>	<b>\$ 1,790.09</b>

#### Repairs to rental unit

The tenant testified that she seeks compensation for repairs that she had completed in the rental unit. Filed in evidence is a description of work. Filed in evidence is an email dated March 16, 2013.

#### Electricity invoices

The tenant testified that when she entered into the tenancy agreement electricity was included in the rent. The tenant stated on July 23, 2013, six months later, she received a letter from the landlord indicating that she owed \$851.53 for electricity. Filed in evidence is a copy of the letter.

The tenant testified that she was told, by the landlord's agent that there was an error on the tenancy agreement and electricity should not have been included in the rent and because the landlord had forgotten to sign the agreement they are not required to honour that agreement. Filed in evidence is a copy of a tenancy agreement, unsigned by the landlord.

The tenant testified that she paid that invoice of \$831.53 and two further invoices of \$105.06 and \$103.50.

#### Double the security deposit

The tenant testified that she sent the landlord her forwarding address on September 30, 2013, by email. Filed in evidence is a copy of the email.

The tenant stated the landlord returned her deposit; however, it was not within 15 days. Filed in evidence is a copy of the cheque and a copy of the envelope.

### 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 tenant has the burden of proof to prove their claim.

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.

### Repairs to rental unit

The evidence of the tenant was that she had completed repairs in the rental unit and seeks to be compensated. However, the items in the description of work are not emergency repairs, and there was no evidence submitted that the landlord agreed that the tenant was authorized to make these repairs or that the landlord agreed to pay for these repairs. I find the tenant has failed to prove the landlord has violated the Act. Therefore, I dismiss this portion of their claim.

### Electricity invoices

The undisputed testimony of the tenant was electricity was included in rent and later was told by the landlord's agent that this was an error on the landlord's part and because the landlord had forgotten to sign the tenancy agreement they were not honouring that agreement.

I accept the undisputed testimony of the tenant that electricity was included in the rent. Therefore, I find the landlord breach the tenancy agreement, when they removed this service. I find the tenant is entitled to recover the amount of **\$1,040.09**.

#### Double the security deposit

In this case, the tenant sent an email to the landlord on September 30, 2013, which requested the return of her security deposit and provided her forwarding address. Under the Act, email is not an approved method of service.

However, the landlord responded to the email indicated the security deposit would be returned. However, the email is not dated.

Under the Act, the landlord has 15 days to return the security deposit from when they receive the forwarding address in writing.

I find the tenant has failed to prove when the landlord received the forwarding address and the security deposit was returned on October 22, 2013. I find the tenant has failed to prove the landlord has violated the Act. Therefore, the tenant is not entitled to double the security deposit.

I find that the tenant has established a total monetary claim of **\$1,090.09** comprised of the above described amount and the \$50.00 fee paid for this application.

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

#### Conclusion

The tenant is granted a monetary order in the above amount.

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: February 20, 2014

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Residential Tenancy Branch

