



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNSD, O

### Introduction

This is an application for a Monetary Order for \$2400.00, and a request for recovery of the \$50.00 filing fee.

The applicant testified that the respondent was served with notice of the hearing by registered mail that was mailed on December 1, 2013; however the respondent did not join the conference call that was set up for the hearing.

Pursuant to section 90 of the Residential Tenancy Act, documents sent by registered mail are deemed served five days after mailing and therefore it is my finding that the respondent has been properly served with notice of the hearing.

All testimony was taken under affirmation.

### Issue(s) to be Decided

Is the applicant entitled to a Monetary Order in the amount of \$2400.00?

### Background and Evidence

The applicant testified that:

- This tenancy began on August 21, 2013 with a monthly rent of \$800.00, and a security deposit of \$400.00 was collected.
- As part of the tenancy agreement the landlord was to supply and install a wood pellet stove; however it was not installed until after she vacated.
- She was forced to vacate the rental unit due to a buildup of mould in the rental unit that resulted from a roof leak.

- Due to the fact that there was no heat in the rental property the mould situation was got much worse as the weather got colder and as a result she was unable to live in the rental unit in the month of October 2013, and physically removed all her belongings from the rental unit by October 18, 2013.
- It was not safe for her to live in the rental unit with the mould buildup, and the lack of heat, due to the fact that she was pregnant.
- She is requesting the return of the rent paid for the month of October 2013 because the rental unit was uninhabitable.
- The landlord has also failed to return any of her security deposit even though she gave the landlord a forwarding address in writing on October 23, 2014.(copy attached)

She is therefore requesting a Monetary Order as follows:

Return of October 2013 rent doubled	\$1600.00
Return of security deposit doubled	\$800.00
Filing fee	\$50.00
Total	\$2450.00

### Analysis

It is my finding that the applicant has shown that this rental unit was uninhabitable for the month of October 2013, due to mould buildup that was exacerbated by lack of heat to the rental unit. I therefore will allow the request for return of the October 2013 rent; however I will not order that it be returned double as there is no provision under the Residential Tenancy Act requiring the doubling of returned rent.

As far as the security deposit is concerned, I will allow the claim for return of double the security deposit.

Section 38 of the Residential Tenancy Act states that, if the landlord does not either return the security deposit, get the tenants written permission to keep all or part of the security deposit, or apply for dispute resolution within 15 days after the later of the date the tenancy ends or the date the landlord receives the tenants forwarding address in writing, the landlord must pay the tenant double the amount of security deposit.

The landlord has not returned the tenants security deposit or applied for dispute resolution to keep any or all of tenant's security deposit and the time limit in which to apply is now past.

This tenancy ended on October 18, 2013 and it is my finding that the applicant has shown that the landlord had a forwarding address in writing by October 23, 2013, and there is no evidence to show that the tenant's right to return of the deposit has been extinguished.

Therefore the landlord must pay double the \$400.00 amount of the security deposit to the tenant, for a total of \$800.00.

### Conclusion

I have allowed \$1650.00 of the claim and have issued a Monetary Order in that amount.

The remainder of this claim 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: March 18, 2014

---

Residential Tenancy Branch

