



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **Decision**

### **Dispute Codes:**

MNSD,MNDC , FF

### **Introduction**

This Dispute Resolution hearing was convened to deal with an application by the tenant for a refund of the security deposit and monetary compensation for moving costs and storage due to early termination by the landlord.

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**

- Is the tenant entitled to compensation for the claim for damages or loss?
- Is the tenant entitled to the return of the security deposit pursuant to section 38 of the Act?

### **Background and Evidence**

The tenancy began in October 2013 with rent of \$1,200.00 and a security deposit of \$600.00 had been paid. A copy of the tenancy agreement was submitted into evidence.

The tenant testified that they had given the landlord verbal Notice that they would be vacating at the end of January 2014, but had never given written notification. However, according to the testimony from both the landlord and the tenant, by January 22, 2014, the landlord had acknowledged that the tenant was leaving and was trying to find a new tenant on short notice.

The tenant testified that the landlord pressured the tenant to vacate early and this disrupted the tenant's quiet enjoyment of the suite for the final week of the tenancy. The tenant testified that actually locked the tenant out of the unit on the afternoon of January 31, 2014. The tenant is therefore claiming the cost of moving and storage.

The landlord acknowledged that they did urge the tenant to remove their possessions as early as possible because they wanted the unit to be in show-worthy condition. The landlord pointed out that they were not given sufficient notice of the ending of the tenancy and therefore were under pressure to find a renter. The landlord testified that by January 31, 2014, the unit was virtually empty and the landlord felt entitled to take possession.

In regard to the refund of the tenant's security deposit, both parties agreed that the tenant provided a forwarding address to the landlord and that the deposit was not returned.

### **Analysis**

#### **Security Deposit Claim by Tenant**

Section 38 of the Act deals with the rights and obligations of landlords and tenants in regards to the return of security deposit and pet damage deposit. Section 38(1) states that within 15 days of the end of the tenancy and receiving the tenant's forwarding address a landlord must either:

- repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;

OR

- make an application for dispute resolution claiming against the security deposit or pet damage deposit.

Section 38(6) provides that If a landlord does not comply with the Act by refunding the deposit owed or making application to retain it within 15 days, the landlord may not make a claim against the security deposit or any pet damage deposit, and must pay the tenant double the amount of the security deposit.

I find that the landlord retained the tenant's \$600.00 security deposit and that the landlord did not make an application to retain the deposit or portion thereof.

Based on the above, I find that the tenant is entitled to receive double the deposit wrongfully retained by the landlord, amounting to \$1,200.00.

### Analysis: Damages and Compensation

The tenant's claim for compensation is based on the landlord's actions in forcing the tenant to remove their possessions prior to the end date of the tenancy.

Section 7 of the Act states that if a landlord or tenant does not comply with this Act, the regulations or their 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 the authority to determine the amount and to order payment under these circumstances.

Therefore in order to justify payment of damages under section 67, the Applicant would be required to prove that the other party did not comply with the Act and that this non-compliance resulted in costs or losses to the Applicant, pursuant to section 7.

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 tenant, to prove the existence of the damage/loss and that it stemmed directly from a violation of the agreement or a contravention of the Act on the part of the respondent.

Although I find that the landlord would be in violation of the Act if they physically forced the tenant to leave before January 31, 2014, I find that the tenant has not submitted sufficient proof that they were actually forced to move out early. I do accept that the landlord took the keys and the tenant was locked out of the unit on the afternoon of January 31, 2014. However, I find that, because the unit appeared to be empty at that point, the landlord had reason to assume that the tenant was finished moving out.

In addition to the above, I find that the tenant had also violated the Act by not providing one-month written Notice to End the tenancy, as required. Therefore, I find that the tenant is not entitled to be compensated for losses they incurred, being that they did not terminate their tenancy in compliance with the Act from the outset.

Given the above, I find that the portion of the tenant's application relating to the claim for moving and storage costs must be dismissed.

Based on the testimony and evidence presented during these proceedings, I find that the tenant is entitled to total monetary compensation of \$1,250.00, comprised of \$1,200.00 for double the \$600.00 security deposit wrongfully retained and the \$50.00 fee paid by the tenant to file this application.

I hereby grant a monetary order in the amount of \$1,250.00 in favour of the tenant. This order must be served on the respondent and if unpaid may be enforced in Small Claims Court if necessary.

The remainder of the tenant's application is dismissed without leave.

### **Conclusion**

The tenant is partially successful in the application and is granted a refund of double the security deposit. The tenant's monetary claim for damages is dismissed.

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: May 28, 2014

---

Residential Tenancy Branch

