



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding NEW ORLEANS COURT  
and [tenant name suppressed to protect] privacy]

## **DECISION**

### **Dispute Codes:**

Landlord: MNSD, MNR, FF  
Tenant: MNSD, MNDC

### **Introduction**

This hearing was convened in response to cross-applications by the parties for dispute resolution. The tenant filed March 04, 2014 pursuant to the *Residential Tenancy Act* (the Act) for Orders as follows:

1. An Order for return of security deposit - Section 38
2. A monetary Order for damage and loss – Section 67

The landlord filed April 10, 2014 for Orders as follows;

1. A monetary Order for Unpaid rent / utilities – section 67
2. An Order to retain the security deposit - Section 38
3. An Order to recover the filing fee for this application (\$50) - Section 72.

Both parties attended the hearing and were given opportunity to discuss and settle their dispute, present relevant evidence, and make relevant submissions. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present. The tenant acknowledged they determined not to send any additional evidence to the landlord subsequent to their application. As a result, the landlord was not sent an evidence package of 10 documents and a series of photographs, therefore the parties were advised this evidence is not admissible nor would it be considered for this matter. None the less, the parties were given opportunity to present their evidence orally in testimony and each was permitted to respond to it. The parties were apprised that only *relevant* evidence would be considered in the Decision.

### **Issue(s) to be Decided**

Is the landlord entitled to the monetary amounts claimed?

Is the tenant entitled to the monetary amounts claimed?

*Each party bears the burden of proving their respective claims.*

## **Background and Evidence**

The undisputed evidence in this matter is as follows. The tenancy began on June 01, 2013 as a verbal tenancy agreement. The parties agree there was no move in mutual condition inspection, although the parties participated in a move out mutual condition inspection – and the requisite report has been accepted into evidence. At the outset of the tenancy the landlord collected a security deposit in the amount of \$425.00 which the landlord retains in trust. During the tenancy the payable monthly rent was in the amount of \$850.00 due in advance on the first day of each month. The tenant vacated February 13, 2014 pursuant to the landlord's 10 Day Notice to End for non payment of rent. The tenant agrees they did not pay the rent for February 2014. The parties agree the landlord received the tenant's forwarding address in writing February 13, 2014. The landlord testified that they relied on a letter from the tenant dated January 24, 2014 that they could keep the deposit as full and final resolve to any rent owed, therefore did not think they were required to make application to retain it. The landlord determined to file for the unpaid rent for February 2014 after receiving the tenant's application seeking double the deposit. The landlord was able to re-rent the unit for March 01, 2014.

### **Landlord's application**

The landlord seeks the unpaid rent for February 2014.

### **Tenant's application**

The tenant seeks the return of their security deposit and double the amount pursuant to the provisions of the Act. They claim they provided their forwarding address on February 13, 2014 and have never received it.

The tenant also claims that the rental unit was unclean when they moved in and expended time and cost to clean the unit. They also claim that the range hood fan did not function during the entire tenancy; the laminated unit floor seemed compromised and felt uneven, a hole beside the refrigerator allowed mice to enter and rodent feces was deposited under the stove. The tenant further claims that in the first 5 - 6 weeks of the tenancy they had no hot water in the suite and acknowledged that this occurred before the new resident manager was installed. In addition, after the new manager was installed the rental unit had no heat or hot water for a period of 3 days, which was acknowledged by the landlord. As a result of the matters identified by the tenant, they claim that they and their dog were repeatedly ill. The tenant referenced the signed move out condition inspection report to highlight that "rat shit" and a non-working "range hood" were noted in the report. The tenant seeks compensation reflecting, what they refer as, a loss of quiet enjoyment.

The landlord testified they were never informed to the issues the tenant raised in this hearing, and that it was available to the tenant to inform the landlord, given that they provide pest control services and make repairs as identified. None the less, the landlord acknowledges that at the outset of the tenancy a previous manager failed to

complete a tenancy agreement and arrange a move in inspection – issues which both parties agree do not now exist after installing a new resident manager. The landlord also acknowledges the absence of heat and hot water for a 3 day period during the tenancy, as well as a non-functioning range hood; however, they do not understand the tenant's claim respecting a compromised floor. The unit has re-rented purportedly without complaint from the new tenant.

### **Analysis**

The onus is on the respective parties to prove their claims on balance of probabilities. On preponderance of all the evidence submitted, and on balance of probabilities, I find as follows:

#### **Landlord's claim**

**Section 26** of the Act, in relevant part, states as follows:

#### **Rules about payment and non-payment of rent**

**26** (1) A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

I find the tenant did not pay the rent for February 2014 and had no right under the Act to mitigate or ignore its payment. I find the landlord is owed the amount payable under the tenancy agreement. As a result, I grant the landlord **\$850.00** for unpaid rent. As the landlord was successful in their claim they are entitled to recover their filing fee of \$50.00 for a sum award of **\$900.00**.

#### **Tenant's claim**

The following Sections of the Act are relevant to this matter (emphasis added).

#### **Section 21     Tenant prohibition respecting deposits**

**21** Unless **the landlord gives written consent**, a tenant must not apply a security deposit or a pet damage deposit as rent.

#### **Section 38(4)   Return of security deposit and pet damage deposit**

(4) A landlord may retain an amount from a security deposit or a pet damage deposit if,

(a) **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 matter the evidence is the tenant proposed in a letter how the security deposit could be accepted to offset rent in exchange for mutually ending the tenancy. I have

not been provided evidence the landlord had a right to keep the security deposit as prescribed by Sections 21 or 34(4). As a result, the landlord was obligated to administer the security deposit at the end of the tenancy as prescribed by the Act.

**Section 38(1)** of the Act provides as follows, (emphasis added)

**Return of security deposit and pet damage deposit**

38(1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of

38(1)(a) the date the tenancy ends, and

38(1)(b) the date the landlord receives the tenant's forwarding address in writing,

the landlord **must** do one of the following:

38(1)(c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;

38(1)(d) file an application for dispute resolution to make a claim against the security deposit or pet damage deposit.

I find that the landlord failed to repay the security deposit in full, or to make an application for dispute resolution within 15 days of receiving the tenant's forwarding address in writing and is therefore liable under section 38(6) which provides:

38(6) If a landlord does not comply with subsection (1), the landlord

38(6)(a) may not make a claim against the security deposit or any pet damage deposit, and

38(6)(b) **must** pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

As the parties did not agree on how the security deposit should be administered, the landlord was obligated under section 38 to return the entire original amount of \$425.00. Therefore, the amount which is *doubled* is the original amount of the deposit. As a result I find the tenant has established an entitlement claim of **\$850.00**.

On preponderance of the evidence and on balance of probabilities, I find that the tenant is entitled to a reduction in the value of the tenancy in compensation for specific issues in the rental unit, as follows.

I find on the basis of several oversights by the landlord's previous resident manager, that the rental unit was likely unclean when the tenant moved in, and the tenant cleaned it. As a result, I grant the tenant **\$75.00** for cleaning.

On balance of probabilities, I accept the tenant's claim they lacked hot water for a period at the outset of the tenancy. As a result, I grant the tenant **\$150.00** for this portion of their claim.

I find the tenant has provided sufficient evidence to support their claim that the kitchen range hood fan did not function, and as a result I grant the tenant \$10.00 for each whole month(8) of the tenancy, in the sum of **\$80.00**.

I find sufficient evidence the tenant lacked heating and hot water for 3 days, and as a result I grant the tenant \$10.00 per day in the sum of **\$30.00**.

I find the tenant has provided evidence the rental unit experienced the presence of mice; however, I have not been provided evidence the landlord was alerted of the matter for them to respond to the problem. As a result, the landlord cannot be held wholly accountable for this portion of the tenant's claim and the tenant must share in mitigating this portion of their claim. As a result, I grant the tenant a set amount of **\$50.00** for the presence of mice in the unit.

I find the tenant has not provided sufficient evidence the flooring within the rental unit was structurally compromised, and therefore I **dismiss** this portion of the tenant's claim.

I find the tenant has not provided evidence the conditions within the rental unit caused them illness, and as a result I **dismiss** this portion of the tenant's claim.

The sum of the tenant's award is **\$1235.00**.

*Calculation for Monetary Order*

tenant's award	\$1235.00
landlord's award	- \$900.00
<b>monetary award for tenant</b>	<b>\$335.00</b>

**Conclusion**

The landlord's application has been granted.

The tenant's application, in part, has been granted.

The balance of all claims is **dismissed**, without leave to reapply.

**I grant** the tenant a Monetary Order under Section 67 of the Act for the amount of **\$335.00**. If necessary, this Order may be filed in the Small Claims Court and enforced as an Order of that Court.

**This Decision is final and binding on both parties.**

*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 12, 2014

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Residential Tenancy Branch

