



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MND, MNSD, MNDC, FF

### Introduction

This hearing dealt with applications from both the landlord and the tenants under the *Residential Tenancy Act* (the *Act*). The landlord applied for:

- a monetary order for damage to the rental unit, and for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover his filing fee for this application from the tenant pursuant to section 72.

The tenant applied for:

- authorization to obtain a return of double his security deposit pursuant to section 38; and
- authorization to recover his filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. The tenant confirmed that he received a copy of the landlord's dispute resolution hearing package sent to him by regular mail on February 20, 2014. Although section 89(1) of the *Act* requires that any application for dispute resolution sent by mail is to be sent by registered mail, I find that the tenant has acknowledged receipt of the landlord's application for dispute resolution included in the landlord's hearing package. The landlord's agent (the agent) did not dispute receiving a copy of the tenant's dispute resolution hearing package. I find that both parties have been served with one another's hearing packages and were prepared to address the issues identified in one another's applications for dispute resolution.

The only written or photographic evidence received by the Residential Tenancy Branch (the RTB) for either application was a copy of the tenant's January 31, 2014 letter advising the landlord of his forwarding address, and 18 photographs supplied by the

tenant. The tenant testified that he did not send the landlord copies of photographs of the condition of the rental unit at the end of this tenancy to the landlord. As the tenant has not provided these photographs to the landlord, I advised the parties that I would not be taking these photographs into consideration in my reaching my decision.

#### Issues(s) to be Decided

Is the landlord entitled to a monetary award for damage or losses arising out of this tenancy? Which of the parties are entitled to the tenant's security deposit? Is the tenant entitled to a monetary award equivalent to double the value of his security deposit as a result of the landlord's failure to comply with the provisions of section 38 of the *Act*? Are either of the parties entitled to recover their filing fees for this application from one another?

#### Background and Evidence

Although the parties supplied no copy of the written Residential Tenancy Agreement (the Agreement) apparently signed by the parties, the agent did not dispute the tenant's sworn testimony that this tenancy began as a one-year fixed term tenancy on or about August 1, 2011. The tenant said that a second one-year fixed term came into effect on August 1, 2012. No new Agreement was reached after the expiration of the second fixed term, so this became a periodic tenancy as of August 1, 2013. Monthly rent was initially set at \$1,350.00, payable in advance on the first of each month. By the end of this tenancy, when the tenant vacated the rental unit on January 31, 2014, the monthly rent had increased to \$1,410.00. The landlord continues to hold the tenant's \$650.00 security deposit.

The agent testified that he understood that his uncle, the landlord, conducted a joint move-in condition inspection with the tenant when this tenancy began. The tenant said that his only initial inspection with the landlord was when he viewed the rental unit and signed the Agreement. Both parties agreed that the landlord and the tenant participated in a joint move-out inspection of the rental unit on January 31, 2014, when the tenant handed over his keys to the rental unit. The agent confirmed that the landlord did not create reports of either the joint move-in or joint move-out inspections.

The landlord applied for a monetary award of \$250.00. This amount was to compensate him for 10 hours of cleaning at a rate of \$20.00 per hour, plus the recovery of his \$50.00 filing fee. In the landlord's application for dispute resolution, the landlord identified many concerns about the condition of the rental unit at the end of this tenancy. In the landlord's application and in the agent's sworn testimony, the landlord maintained that the premises were left in a dirty condition, requiring 10 hours of cleaning by both the landlord and his caregiver. Concerns were raised by the agent regarding the lack of

cleaning of the carpet, the stove, damage to walls and railings. At the hearing, the agent testified that the landlord believed that up to six people may have been residing in this rental unit at various times and that the rental unit was damaged as a result of this excessive use of the premises. After this tenancy ended, the landlord offered to return \$450.00 of the tenant's security deposit. At the hearing, the agent gave sworn testimony that he had a \$143.00 receipt for professional carpet cleaning required at the end of this tenancy.

The tenant applied for a monetary award of \$1,350.00. This amount represented a request for a return of double his security deposit due to the landlord's failure to abide by the requirements of section 38 of the *Act* and to recover the tenant's filing fee. The tenant maintained that one of the stove burners never worked during this tenancy. He said that he had no memory of the agent's claim that the landlord showed him gum and vomit on the carpet at the end of this tenancy. The tenant testified that the carpet was 20 or 30 years old and that vacuumed the carpet at the end of this tenancy. He testified that he cleaned the rental unit such that it was left in as good a condition as when he first began his tenancy.

#### Analysis

Section 38(1) of the *Act* requires a landlord, within 15 days of the end of the tenancy or the date on which the landlord receives the tenant's forwarding address in writing, to either return the security deposit or file an Application for Dispute Resolution seeking an Order allowing the landlord to retain the deposit. If the landlord fails to comply with section 38(1), then the landlord may not make a claim against the deposit, and the landlord must return the tenant's security deposit plus applicable interest and must pay the tenant a monetary award equivalent to the original value of the security deposit (section 38(6) of the *Act*). Section 38(4)(a) of the *Act* also allows a landlord to retain an amount from a security deposit if "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." As there is no evidence that the tenant has given the landlord written authorization at the end of this tenancy to retain any portion of his security deposit, section 38(4)(a) of the *Act* does not apply to the tenant's security deposit.

With respect to the return of the security deposit, the triggering event is the latter of the end of the tenancy or the tenant's provision of the forwarding address. While this tenancy ended on January 31, 2014, the tenant testified that he did not send his forwarding address in writing to the landlord by registered mail until February 6, 2014. The agent testified that the landlord received the tenant's forwarding address on February 10, 2014. Based on this testimony, I find that the landlord's February 19, 2014 application for authorization to retain a portion of the tenant's security deposit was filed

with the RTB within the 15-day time period for doing so. As such, I find that the landlord has not contravened the provisions of section 38(1) of the *Act*, and therefore dismiss the tenant's application for a return of a monetary award equivalent to double his security deposit pursuant to section 38(6) of the *Act*. However, the landlord continues to hold the tenant's security deposit.

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must 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 other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. In this case, the onus is on the landlord to prove on the balance of probabilities that the tenant caused the damage and that it was beyond reasonable wear and tear that could be expected for a rental unit of this age. The only way that the landlord could retain any portion of this deposit is if the landlord can demonstrate his entitlement to a monetary award for losses or damages arising out of this tenancy.

When disputes arise as to the changes in condition between the start and end of a tenancy as was apparent during this hearing, joint move-in condition inspections and inspection reports are very helpful. While a joint move-out condition inspection occurred and disputed testimony was heard as to whether a joint move-in condition inspection happened, both parties agreed that the landlord did not issue any reports for either the move-in or move-out inspections.

Sections 23, 24, 35 and 36 of the *Act* establish the rules whereby joint move-in and joint move-out condition inspections are to be conducted and reports of inspections are to be issued and provided to the tenant. These requirements are designed to clarify disputes regarding the condition of rental units at the beginning and end of a tenancy.

Section 23 of the *Act* reads in part as follows:

**23** (1) *The landlord and tenant together must inspect the condition of the rental unit on the day the tenant is entitled to possession of the rental unit or on another mutually agreed day...*

(4) *The landlord must complete a condition inspection report in accordance with the regulations.*

*(5) Both the landlord and tenant must sign the condition inspection report and the landlord must give the tenant a copy of that report in accordance with the regulations...*

Section 24 of the *Act* reads in part as follows:

**Consequences for tenant and landlord if report requirements not met**

**24** *(2) The right of a landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord*

*(a) does not comply with section 23 (3) [2 opportunities for inspection],*

*(b) having complied with section 23 (3), does not participate on either occasion, or*

*(c) does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations...*

Sections 35(3) and 36(2)(c) of the *Act* provide similar obligations to the landlord to issue a joint move-out condition inspection report. These provisions also extinguish the landlord's right to claim against the tenant's security deposit if the landlord does not produce a report.

Since I find that the landlord did not follow the requirements of the *Act* regarding the condition inspection reports, I find that the landlord's eligibility to claim against the security deposit has been extinguished.

Despite the extinguishment of the landlord's claim to retain the security deposit, I can still issue a monetary award for damage under section 67 of the *Act* or in accordance with the provisions of section 37(2)(a) of the *Act* requiring a tenant to leave the rental unit reasonably clean and undamaged at the end of a tenancy. However, other than the description in the Details of the Dispute in the landlord's application for dispute resolution and the agent's sworn testimony, I find that the landlord has provided little evidence to demonstrate his entitlement to a monetary award for damage. Even without a completed move-in and move-out inspection report, the landlord could have provided photographs of the condition of the rental unit at the end of this tenancy. The landlord or his agent had ample time to enter into written evidence a copy of the carpet cleaning invoice or a statement from the person who assisted him in the cleaning of this rental unit. The landlord or the person who helped with the cleaning could have participated in

this hearing and given their own direct sworn testimony regarding the condition of the rental unit at the beginning and end of this tenancy. None of this occurred. In fact, the only direct testimony given was the tenant's assertion that he left the rental unit in no worse condition than it was in at the start of this tenancy. Without a move-in and move-out condition inspection report or any direct sworn testimony from those who viewed the rental unit at the beginning and end of this tenancy, I find that the landlord has not provided sufficient evidence to contradict the tenant's claims in this regard. As noted above, the burden of proof in establishing entitlement to a monetary award or damage or loss rests with the party making the claim, in this case, the landlord. Based on a balance of probabilities, I find that the landlord has failed to establish that the condition of the rental unit at the end of this tenancy entitled the landlord to the issuance of a monetary award for damage or loss arising out of this tenancy. I dismiss the landlord's claim for a monetary award without leave to reapply.

As the tenant has been successful in his application, I allow him to recover his filing fee from the landlord. As the landlord has been unsuccessful in his application, the landlord bears the cost of his filing fee. I order the landlord to return the tenant's \$650.00 security deposit plus applicable interest forthwith. No interest is payable over this period. I also order the landlord to pay the tenant an additional \$50.00 to enable the tenant to recover his filing fee for the tenant's application.

#### Conclusion

I dismiss the landlord's application without leave to reapply. I allow the tenant's application to recover his original \$650.00 security deposit plus his \$50.00 filing fee. I issue a monetary order in the tenant's favour in the amount of \$700.00 to implement this decision. The tenant is provided with these Orders in the above terms and the landlord must be served with this Order as soon as possible. Should the landlord fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders of that Court. 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: June 06, 2014

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Residential Tenancy Branch

