



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **Decision**

### **Dispute Codes:**

MNSD, MNDC, O, FF

### **Introduction**

This Dispute Resolution hearing was convened to deal with an application by the tenant seeking a refund of the security deposit and a monetary order for money owed or compensation for damage or loss under the Act. The application also indicates that the tenant is requesting reimbursement for the \$50.00 fee paid by the tenant for this application.

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.

### **Preliminary Matter**

Although the tenant has requested monetary compensation from the landlord to reimburse the tenant for the cost of the application, the records indicate that the tenant did not pay the application fee. I find that the tenant received a waiver for the fee and therefore has no right to the monetary claim for the cost of the application.

Accordingly, the portion of the tenant's application seeking reimbursement for the filing fee will not be considered and is dismissed.

### **Issues to be Decided**

- Is the tenant entitled to the return of the security deposit pursuant to section 38 of the Act?
- Is the tenant entitled to monetary compensation for damages and losses pursuant to *section 7* and *section 67* of the Act?

### **Background and Evidence**

The tenant was seeking to receive a monetary order for the return of the security deposit retained by the landlord and monetary compensation for loss of value to the tenancy, damages and moving costs.

The tenancy began on August 1, 2013. The tenant apparently moved out near the end of April 2014. Rent was \$650.00 per month and the tenant had paid a security deposit of \$325.00, which has not been refunded by the landlord.

The tenant testified that, during the tenancy, she had made purchases at her own cost to improve the yard and she is now seeking to be reimbursed for the costs.

The landlord did not agree with the tenant's claim for compensation for the purchases. The landlord pointed out that, although the tenant was permitted to put in a garden, the landlord had never agreed to pay for any of the improvements to the yard.

The landlord stated that the tenant moved out without giving adequate notice.

The tenant pointed out that she attempted to find out whether or not the landlord was successful in re-renting the unit for the month of May 2014, but the landlord did not respond to the tenant's messages.

### **Analysis: Security Deposit Claim by Tenant**

Section 38 of the Act 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 tenant did not provide the landlord with a written forwarding address at the end of the tenancy and the landlord only received a current address on the tenant's application form.

Therefore, I find that the tenant is entitled to a refund of \$325.00 for the deposit.

### **Analysis: Damages and Compensation**

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 must 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. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

I find that the tenant's monetary claim is not adequately supported by the evidence as the tenant has not proven the specific costs that were incurred, nor has the tenant provided a reason why the landlord should be responsible under the Act or the agreement for reimbursing the tenant for the expenditures.

In addition to the above, I find that the tenant has failed to identify any particular violation of the Act on the part of the landlord that would justify compensating the tenant for their improvements made on the property.

Accordingly, I find that the tenant's claim for damages and loss does not satisfy any element of the above test for damages.

Based on the testimony and evidence presented during these proceedings, I find that the tenant is entitled to total monetary compensation of \$325.00, refund of the security deposit retained by the landlord. I hereby grant a monetary order in the amount of \$450.00 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 awarded a refund of the security deposit and the tenant's 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: August 06, 2014

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Residential Tenancy Branch

