



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### Dispute Codes

For the tenant: MNDC  
For the landlord: MNR MNSD MNDC FF

### Introduction

This hearing was convened as a result of the cross applications of the parties under the *Residential Tenancy Act* (the “Act”).

The tenant applied for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement.

The landlord applied for a monetary order for damages to the unit, site or property, for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, for unpaid rent or utilities, to keep all of part of the tenant’s security deposit, and to recover the filing fee.

The tenant and the landlord attended the teleconference hearing. The parties gave affirmed testimony, were provided the opportunity to present their evidence orally and in documentary form prior to the hearing, and make submissions to me.

Both parties confirmed that they received documentary evidence from the other party and that they had the opportunity to review that evidence prior to the hearing. I find the parties were served in accordance with the *Act* as a result.

### Preliminary and Procedural Matters

During the hearing, the landlord was advised that his application was being refused, pursuant to section 59(5)(c) of the *Residential Tenancy Act* (*Act*), because his application for dispute resolution did not provide sufficient particulars of his monetary claim for compensation, as is required by section 59(2)(b) of the *Act*. I find that

proceeding with the landlord's monetary claim at this hearing would be prejudicial to the tenant, as the absence of full particulars including a monetary breakdown of the amount being claimed with his Application, makes it difficult, if not impossible, for the landlord to adequately prepare a response to a claim against them. In addition, I note that the landlord attempted to increase his monetary claim through the submission of documentary evidence, rather than to amend his application in accordance with the Rules of Procedure and that the landlord's attempt to increase his monetary claim through the submission of documentary evidence versus an amendment to his Application would be prejudicial to the tenant.

Given the above, the landlord's application has been refused, and the landlord has liberty to reapply as a result. As I have refused the landlord's application, and the landlord had applied against the tenant's security deposit, pursuant to Residential Tenancy Branch Policy Guideline 17, **I ORDER** the landlord to return the tenant's security deposit of \$625.00, plus interest of \$10.19, for a total of \$635.19 to the tenant and that the payment is to be mailed and post-marked by **September 30, 2014**. The current address for the tenant was confirmed during the hearing and has been included on the cover page of this Decision.

Further to the above, only the tenant's application for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement will be considered.

### Background and Evidence

The parties agreed that a written tenancy agreement exists; however, neither party submitted a copy of the tenancy agreement in evidence. The parties agreed that a periodic, month to month tenancy began on October 1, 2007 and ended on May 30, 2014, when an occupant living in the lower level of the rental unit with the permission of the tenant moved out of the rental unit.

The parties agreed that monthly rent of \$1,500.00 was due on the first day of each month and was not increased during the tenancy. The tenant paid a security deposit of \$625.00 at the start of the tenancy which accrued \$10.19 in interest for a total security deposit including interest of \$635.19. As noted above, I have ordered the landlord to return the tenant's full security deposit including interest of \$635.19. The deadline to return the tenant's security is described above in bold.

The tenant has claimed \$3,609.23 in compensation comprised of the following:

Item 1. Pro-rated rent, March 26 – April 15: 21 days @ \$50.00 per day	\$1,050.00
Item 2. Days without proper facilities described as “penalty to landlord” by the tenant – 21 days @ \$75 per day	\$1,575.00
Item 3. Hotel paid March 28 to April 1	\$311.88
Item 4. Bed and Breakfast April 10 to April 14	\$672.35
<b>TOTAL</b>	<b>\$3,609.23</b>

Regarding item 1, the tenant stated that he arrived at the amount of \$50.00 per day by taking into account the monthly rent of \$1,500.00 and dividing that amount by an average of 30 days per month for a total of \$50.00 per day. The tenant testified that he was seeking compensation in the amount of \$1,050.00 for this portion of this claim comprised of 21 days multiplied by \$50.00 per day. The tenant stated that he did not have any enjoyment of the rental unit for 21 days due to a renovation to the upstairs kitchen and upstairs bathroom. In other words, the tenant was claimed 100% of the daily rental rate amount of \$50.00 multiplied by 21 days. The parties agreed that there was a renovation to the upstairs kitchen and upstairs bathroom (the “renovation”); however, the parties disagreed as to who requested the renovation. The landlord testified that it was the tenant who requested the renovation. The tenant testified that it he did not request the renovation.

The parties agreed that the tenant has access to the lower level bathroom. The parties also agreed that the lower area of the rental unit, where the lower bathroom is located, could only be accessed from the outside as there was no interior access to the lower area of the home. There was dispute on whether there was a kitchen in the lower area of the rental unit. The parties agreed that there was a sink, hot plate and fridge in the lower area, which is supported by photo evidence. The tenant stated that the lower area does not include a kitchen as it does not have an oven. The landlord disagreed and stated that the lower area has both a kitchen and a bathroom which the tenant could use. The parties agreed that the lower area had a kitchen table, which the tenant stated belonged to the tenant.

Regarding item 2, the tenant stated that the amount of \$1,575.00 was being claimed as a “penalty” for the landlord. This portion of the tenant’s claim was dismissed during the hearing as the *Act* does not provide for a “penalty” as being claimed by the tenant in the matter before me.

Regarding item 3, the tenant has claimed \$311.88 for hotel costs for March 28 to April 1, 2014 as the tenant could not move downstairs due to the tenant permitting his friend to live downstairs. The tenant confirmed his friend was an occupant and not a co-tenant. The tenant confirmed that he did not have a tenancy agreement with his friend, who was living downstairs. The parties agreed that the upstairs bedrooms were not part of the renovation. A receipt for \$311.88 was submitted in evidence.

Regarding item 4, the tenant has claimed \$672.35 for a bed and breakfast for his mother who could not reside with him due to the kitchen and bathroom renovation. The tenant stated that the landlord was aware his mother was arriving on April 10, 2014. The landlord disputed that the tenant's mother was arriving on April 10, 2014 and stated that he had a different date, which was either April 17 or April 18 in his records. The tenant confirmed that he did not have documentary evidence to support that the landlord was advised in writing by the tenant that his mother was arriving on April 10, 2014 and that the renovation must be completed by that date. The tenant wrote in his claim that his 84 year old mother had to stay at the bed and breakfast due to the renovation. There is no dispute presented that the renovation was ultimately completed by April 17 or April 18, 2014.

### Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on the balance of probabilities, I find the following.

#### Test for damages or loss

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in sections 7 and 67 of the *Act*.

Accordingly, an applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did what was reasonable under the *Act* to minimize the damage or loss.

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 *Act*, regulation, or

tenancy agreement on the part of the landlord. Once that has been established, the tenant must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the tenant did what was reasonable to minimize the damage or losses that were incurred.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

Regarding item 1, I do not accept that the tenant's claim that he did not have any enjoyment of the rental unit for the period being claimed, and I find the tenant's claim to be unreasonable as a result. Furthermore, I do not accept the tenant's allegation that the lower rental unit did not have a kitchen because of a lack of an oven. I find the lower portion of the rental unit did have a kitchen as it had a fridge, sink, and hot plate. In addition, the kitchen also had a kitchen table. The downstairs level also had a working bathroom and I find it was just as likely that the tenant asked for the renovation and that the tenant did have use of a bathroom downstairs and a kitchen downstairs. As the upstairs bedrooms were not impacted by the renovation, **I dismiss** this portion of the tenant's claim due to insufficient evidence, **without leave to reapply**. I find the tenant has failed to meet the burden of proof to prove parts one and two of the test for damages or loss described above.

Regarding item 2, and as described above, this portion of the tenant's claim was dismissed during the hearing as the *Act* does not provide for a "penalty" as being claimed by the tenant in the matter before me. Item 2 is **dismissed without leave to reapply**.

Regarding item 3, **I dismiss** this portion of the tenant's claim, due to insufficient evidence, **without leave to reapply**. The tenant confirmed that the bedrooms were not impacted and I find the tenant had access to a lower level bathroom and kitchen and that it was just as likely that the tenant asked for the renovation. Therefore, I find it was the choice of the tenant to stay at a hotel and that the tenant has failed to meet the burden of proof to prove parts one and two of the test for damages or loss described above.

Regarding item 4, **I dismiss** this portion of the tenant's claim, due to insufficient evidence, **without leave to reapply**. The tenant has failed to prove that there was an agreement between the parties that the renovation would be completed by April 10, 2014, when the tenant's mother was arriving. As such, I find the tenant has failed to meet the burden of proof to prove parts one and two of the test for damages or loss described above.

As the tenant's application did not have merit, I do not grant the tenant the recovery of the filing fee.

As described above, I have ordered the landlord to return the tenant's security deposit of \$625.00, plus interest of \$10.19, for a total of \$635.19 to the tenant and that the payment is to be mailed and post-marked by **September 30, 2014**. Should the landlord fail to comply with my order, **I grant** the tenant a monetary order pursuant to section 67 of the *Act* in the amount of **\$635.19**, which will be of no force or effect if the tenant receives payments from the landlord in accordance with my order above, and the payment is successfully cashed by the tenant.

### Conclusion

The tenant's application is dismissed, without leave to reapply.

The landlord's application has been refused pursuant to sections 59(5)(c) and 59(2)(b) of the *Act*. The landlord is at liberty to reapply. I note that this decision does not extend any applicable time limits under the *Act*.

I ORDER the landlord to return the tenant's security deposit of \$625.00, plus interest of \$10.19, for a total of \$635.19 to the tenant and that the payment is to be mailed and post-marked by September 30, 2014. The current address for the tenant was confirmed during the hearing and has been included on the cover page of this Decision. Should the tenant require enforcement of the monetary order, the monetary order must first be served on the landlord. The monetary order may then be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

I do not grant either party the recovery of their filing fee.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: September 29, 2014

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Residential Tenancy Branch

