



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding DEVON PROPERTIES LTD.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNR, MNSD, MNDC, FF, ERP, RP, PSF

### Introduction

This hearing was scheduled to hear cross applications. The landlord had applied for a Monetary Order for unpaid; damage or loss under the Act, regulations or tenancy agreement; and, authorization to retain the security deposit. The tenant applied for a Monetary Order for return of the security deposit and damage or loss under the Act, regulations or tenancy agreement. The tenant had also indicated she was seeking orders for emergency repairs, repairs, and for the landlord to provide services and facilities. The tenant and her witness appeared at the hearing but the landlord did not.

The tenant confirmed that she received the landlord's Application and was prepared to deal with the landlord's claims against her. Since the landlord did not appear at the hearing, I dismissed the landlord's application without leave.

The tenant testified that she sent her hearing package to the landlord via registered mail sent on April 13, 2015 and successfully delivered on April 16, 2015. The tenant provided a registered mail tracking number as proof of service. I was satisfied that the tenant served the landlord with her hearing documents and I continued to hear from the tenant without the landlord present.

The tenant stated she does not reside at the rental unit and the subject tenancy has ended. As such, I found her request for repair orders and orders for the landlord to provide her with services and facilities to be moot and I did not consider those requests further. Accordingly, the remainder of this decision deals with the tenant's monetary claims only.

### Issue(s) to be Decided

Has the tenant established an entitlement to compensation for the amounts claimed and return of the security deposit?

### Background and Evidence

The tenant submitted that in viewing the rental unit on December 3, 2014 several deficiencies were noted and the building manager promised that all deficiencies would be rectified by the time the tenancy started. The tenant claimed that she stressed the importance of this to the landlord's agent as she did not want to deal with repair issues once she moved in. The deficiencies included stove elements that did not work; the bi-fold door that was not working properly; and, the cupboard door that did not work properly. Due to the building manager's assurances the tenant paid a security deposit of \$382.50 in cash for a tenancy set to commence January 1, 2015 for the monthly rent of \$765.00 plus parking of \$15.00.

The tenant testified that landlord did not give her a receipt for her cash payment of the security deposit but presented a tenancy agreement for her to sign. The tenant signed the tenancy agreement but the landlord did not. The landlord took the tenancy agreement away and in the days that followed the tenant attended the landlord's office to obtain a copy of the tenancy agreement. She was provided with only some of the pages of the tenancy agreement and it was signed by the landlord on December 5, 2014. The tenant also noticed that the landlord failed to indicate rent included heat even though this was stated in the advertisement she responded to.

On December 31, 2014 the tenant attended the residential property to view the rental unit and deliver payment of the rent for January 2015. The building manager presented her with a move-in inspection report that was already filled in. The tenant started to write notations of deficiencies when the manager forcefully pulled the document away and insisted that they indicate she agreed with the landlord's assessment of the property. The manager then took the money order and locked it in his safe.

On January 1, 2015 the tenant attended the property along with her witness. The tenant noticed that the deficiencies still had not been addressed and there were other issues that she discovered at that time which were not disclosed to her previously by the landlord. For instance: the building is advertised as secured by an enter phone yet she found out that to have the security system work for her she would have to subscribe to a cable service provider's full package which she did not want. Further, she discovered that the dining room light was controlled by a switch in the landlord's office. Also of significant concern was that the keys provided for her suite matched the common laundry room keys meaning other tenants with the laundry room key could open her unit door.

The manager had already completed a move-in inspection report and presented it to the tenant for her signature. The tenant testified that she started to note the deficiencies on the move-in inspection report and the manager yanked it from her and insisted that she just sign the form and indicate she agrees with the manager's assessment.

The tenant submitted that when she pointed out the deficiencies to the manager and that she would not be moving in he became angry, and started yelling and slamming doors.

The tenant submitted that the landlord insisted she sign documents to end the tenancy and acknowledge that she owed the landlord more money. The tenant refused to sign the documents.

The tenant claimed that she attempted to return the keys to the property to the landlord on January 2, 2015, with her witness present, but that the landlord locked the doors as the tenant was walking toward the landlord's office. The tenant then mailed the keys to the landlord along with a letter explaining her position and requesting return of her security deposit and rent. The tenant provided a mailing address by way of her letter which the landlord used to file its Application against the tenant.

The tenant submits that the rental unit was misrepresented to her when she agreed to enter into a tenancy and she seeks to have the tenancy agreement cancelled. As such, the tenant seeks return of her security deposit and the rent she paid for January 2015.

The tenant provided a written submission in support of her application as well as a written statement by her witness. The witness appeared at the hearing and provided testimony subject to my examination. The tenant also provided copies of: the tenancy application; the tenancy agreement she was provided by the landlord; the move-in inspection report; photographs of the keys to the laundry room and the rental unit; the advertisement for the residential property showing the building has an enter phone system and heat is included in rent; a photograph of the money order made out to the landlord in the amount of \$780.00 on December 31, 2014; a copy of the letter mailed to the landlord dated January 5, 2015.

The landlord did not provide any evidence in response to the tenant's claims.

### Analysis

I have considered everything presented to me in making this decision; however, it is important to emphasize that I was not presented any evidence from the landlord in response to the tenant's claims.

In hearing this case, I considered whether the tenancy agreement should be rescinded based upon misrepresentation on part of the landlord. I find, however, I am unsatisfied that there was an intention on part of the landlord to make material misrepresentations to the tenant as opposed to a failure to perform.

Nevertheless, I find, based upon the undisputed evidence of the tenant, that the landlord failed to perform in accordance with the Act and did not deliver the rental unit to the tenant as agreed upon. Below, I provide for the violations of the landlord that I noted, although this list is not exhaustive.

- With respect to payment of the security deposit, the landlord reflected on the tenancy application that \$382.50 was being taken by the landlord as a “holding deposit to secure the rental unit”. The Act limits the type of deposits a landlord may collect from a tenant to a security deposit, a pet damage deposit, and a deposit for keys or other means of access.
- The Act requires the landlord to provide the tenant with a copy of the tenancy agreement. The tenant claimed that she was not provided with all pages of the tenancy agreement. I find this is consistent with the tenancy agreement she provided as evidence and I note that in filing the landlord’s application the tenancy agreement provided by the landlord does not include terms 8 through 29.
- The tenancy agreement does not indicate that rent includes heat even though the tenant provided clear evidence that the landlord advertises building as though heat is included in rent.

In addition to the above, I accept the tenant’s undisputed submissions that the landlord had agreed to make repairs to the rental unit to be completed before the tenancy was to commence and that the landlord failed to do so. I also accept the tenant’s undisputed submissions, the witness’s statement, and photographs of the keys that the lock for the rental unit could be opened by anybody with a key to the laundry room.

In light of the above, I order the tenancy ended effective January 1, 2015 pursuant to the authority afforded me under section 44(1) of the Act which provides that a tenancy ends where:

- (f) the director orders that the tenancy is ended

Having ordered the tenancy ended effective January 1, 2015 due to all of the landlord's failings to act in accordance with the Act and fulfill the agreement to make repairs to the rental unit before the tenancy was to commence, I order the landlord to return the rent the tenant paid for January 2015 in the amount of \$780.00. I further order return of the deposit the landlord collected in the amount of \$382.50. As the tenant was successful in her Application, I also award the tenant recovery of the \$50.00 filing fee she paid for her Application.

Based on my findings above, I provide the tenant with a Monetary Order calculated as follows:

Rent for January 2015	\$ 780.00
Security deposit	382.50
Filing fee	<u>50.00</u>
Monetary Order	\$1,212.50

To enforce the Monetary Order it must be served upon the landlord and it may be filed in Provincial Court (Small Claims) to enforce as an Order of the court.

### Conclusion

The landlord's Application was dismissed.

The tenant has been provided a Monetary Order in the sum of \$1,212.50 to serve upon the landlord and enforce as necessary.

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 25, 2015

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Residential Tenancy Branch

