



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

### Dispute Codes:

MNSD, MNR, MNDC

### Introduction

This hearing was convened in response to cross-applications for dispute resolution by the tenant and landlord pursuant to the *Residential Tenancy Act* (the Act).

The tenant filed application for:

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

The landlord filed application as follows:

1. A monetary Order for loss – Section 67
2. A monetary Order for Unpaid rent – utilities – section 67

Both parties attended the hearing and were given opportunity to settle their dispute, present *relevant* evidence, and make *relevant* submissions. The tenant was represented by a law student advisor. The tenant acknowledged receiving a *portion* of the landlord's evidence by registered mail/expresspost consisting of 4 handwritten pages and a photograph. The tenant claimed to personally serving their evidence to a male at an address the landlord denied as their residence – and which does not correlate with their application. The result of which the landlord stated they did not receive any evidence from the tenant. I am not convinced by the testimony of the tenant they served the landlord with their evidence in a manner prescribed by Section 88 of the Act. The hearing advanced on the merits of the tenant's application solely respecting their security deposit to which they testified; and, the landlord's application. As the landlord did not have benefit of the tenant's claim for loss, this portion of the tenant's application is preliminarily **dismissed**, with leave to reapply. Neither party presented witnesses. Prior to concluding the hearing both parties acknowledged they had presented all of the *relevant* evidence they wished to present in regards to matters advanced in this hearing.

**Issue(s) to be Decided**

Is the landlord entitled to the monetary amounts claimed?  
Is the tenant entitled to the return of their security deposit?

**Background and Evidence**

The *relevant* undisputed evidence in this matter is as follows. The tenancy began December 01, 2014 as a verbal agreement in which the parties agreed on the payable rent in the amount of \$480.00 per month. At the outset the landlord collected a security deposit in the amount of \$240.00 which the landlord retains in trust. The landlord claims that rent did not include utilities. The tenant read a Financial Assistance document stating that rent included utilities. Ultimately the tenancy ended 3 months later under circumstances which remain disputed.

During the hearing the parties discussed the lack of clarity respecting the terms of the agreement for the tenancy, the security deposit, and the discrepancy regarding utilities, and ultimately mutually resolved / settled these matters, as stated herein.

The landlord claims that during the tenancy the tenant had secured his bicycle to the railing of the landlord's front steps, and which the landlord claims they told the tenant to unlock and remove. The landlord claims that one day, as a direct consequence of the secured bicycle, they fell, resulting in a cut and bruise on their leg and a fractured toe. The landlord provided a photograph of a leg with an apparent abrasion. The landlord also claims when they fell they "shattered" their cellular phone. The landlord is claiming \$500.00 for pain and stress, and \$500.00 for the broken phone. The tenant denies responsibility for the landlord's fall and denies the landlord fell as a result of their bicycle.

The landlord further claims that at the end of the tenancy the tenant did not return 2 keys for which they paid \$6.00 to replace them and for which the tenant did not provide a response.

**Analysis**

Each party bears the burden of proving their respective claims. On preponderance of the available evidence and on balance of probabilities, I find as follows;

**Tenant's claim**

During the course of the hearing, the parties discussed their dispute regarding the

security deposit and utilities. The parties reached agreement, choosing to settle the matters for all time, to the parties' mutual satisfaction on the following condition, and at their request that I record the parties' settlement as per Section 63 of the Act as follows,

1. The tenant and landlord agree that the landlord will return to the tenant the security deposit in the amount of \$240.00, forthwith.

#### Landlord's claim

In this matter the burden of proving claims of loss or damages rests with the respective on the claimant who must establish, on a balance of probabilities that they have suffered a loss due to the other's neglect, or failure to comply with the Act. And, if so established, did the claimant take reasonable steps to mitigate or minimize the loss?

**Section 7** of the Act outlines the foregoing as follows:

#### **Liability for not complying with this Act or a tenancy agreement**

**7** (1) 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.

(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Effectively, the landlord must satisfy each component of the test below:

1. Proof the damage or loss exists,
2. Proof the damage or loss occurred *solely* because of the actions or neglect of the tenant 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 reasonable steps to minimize the loss or damage.

The landlord bears the burden of establishing their claims by proving the existence of the loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the tenant. Once that has been established, a claimant must then *provide evidence* that can verify the actual monetary amount of the loss. Finally, the claimant must show that reasonable steps were taken to address the situation and to mitigate the losses that were incurred. Generally, the landlord has not

met the test for damage and loss. Moreover, I find the landlord has not shown that solely the tenant's negligence or non-compliance with the Act resulted in losses for the landlord. Other than the landlord's claim for 2 keys, I find the landlord has not provided sufficient evidence to support the remaining balance of their claims respecting her *leg injury or broken cellular phone*, and as a result **I dismiss** these portions of the landlord's application, without leave to reapply.

On the balance of probabilities, and despite document evidence, I grant the landlord **\$6.00** for the replacement of 2 keys.

The tenant is given an Order in the agreed amount owed by the landlord in respect to the security deposit, from which I deduct the landlord's award of \$6.00 – with a net **Monetary Order** to the tenant in the amount of **\$234.00**. If the landlord pays the tenant the agreed amount, the Monetary Order automatically becomes null and of no effect.

### **Conclusion**

The parties agreed to settle the matter of the security deposit and utilities as stated. The tenant's application for loss is **dismissed**, *with* leave to reapply. The landlord's application for replacement of 2 keys is granted. The balance of all other claims by the landlord, for loss, is **dismissed**.

**I grant** the tenant an Order under Section 67 of the Act for the amount of **\$234.00**. 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: June 25, 2015

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Residential Tenancy Branch

