



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDC

### Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* ("Act") for:

- a monetary order for money owed or compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement, pursuant to section 67.

The landlord and her English language interpreter, JC, and the tenant attended the hearing and were each given a full opportunity to be heard, to present their sworn testimony, to make submissions, and to call witnesses. The landlord confirmed that her English language interpreter had authority to provide translation services at this hearing. This hearing lasted approximately 96 minutes in order to allow both parties, particularly the tenant, to provide full submissions at this hearing.

The tenant confirmed that he served the landlord with his application for dispute resolution hearing package ("Application") on November 12, 2014, by way of registered mail. The tenant provided a Canada Post receipt and tracking number as proof of service. The landlord confirmed receipt of the tenants' hearing notice but not the three letters submitted as written evidence by the tenant. However, the landlord confirmed that she already had the above three letters in her possession from during the tenancy. The landlord confirmed that she was prepared to proceed with this hearing and agreeable to me considering the three letters in this hearing and in my decision. In accordance with sections 89 and 90 of the *Act*, I find that the landlord was duly served with the tenants' hearing notice. Given the testimony from both parties and the landlord's consent, I advised both parties that I would be considering the tenant's written evidence package, consisting of three letters, at this hearing and in my decision.

The landlord confirmed that she sent a written evidence package by way of facsimile to the Residential Tenancy Branch ("RTB") on the day before this hearing. At the time of

this hearing, I had not yet received the landlord's written evidence. The landlord's written evidence package consists of the same three letters submitted above by the tenant, as well as the landlord's change of address and a summary of the landlord's position for this hearing. The landlord confirmed that she was prepared to proceed with the hearing, despite the fact that I had not yet received her written evidence package. The landlord reported the change of address verbally during this hearing and testified with respect to her position at this hearing. As noted above, I am already considering the three letters submitted by both parties at this hearing and in my decision.

#### Preliminary Issue – Amendment of Tenant's Application

During the hearing, the tenant requested an amendment to his Application to add the relief to obtain a monetary award for the return of double his security deposit. The tenant noted that he sought return of his deposit in the "details of the dispute" section as well as the monetary amount section of his Application. However, he did not specifically select this relief in his Application, as he believed that his Application for a monetary order for money owed or compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement, included the return of his deposit. The landlord confirmed that she had notice that the tenant was seeking the return of his security deposit. However, the landlord confirmed that she opposed the tenant's amendment request because the tenant had sufficient time between filing his Application on November 10, 2014 and this hearing date on June 25, 2015, to amend his Application. The landlord indicated that the tenant was seeking important relief and therefore, he should have amended and clarified his request earlier.

I find that the landlord had proper notice of the tenant's Application for the return of his security deposit, as he had indicated this relief in the details and monetary amount of his Application. I accept that the tenant was unaware that he had not applied for the correct relief and therefore, was unable to amend his Application prior to this hearing. Accordingly, I grant the tenant's amendment request pursuant to my authority to do so under section 64(3)(c) of the *Act*. I hereby amend the tenant's Application to seek a monetary order 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*.

The tenant testified that he was amending his Application to seek \$495.16 rather than the \$560.00 originally sought. The tenant stated that he miscalculated the return of double the security deposit minus the portion returned to him, as well as the prorated rent and the filing fee.

### Issues to be Decided

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*?

Is the tenant entitled to a monetary order for money owed or compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement?

### Background and Evidence

The landlord testified that this tenancy began on February 2, 2014 and ended on October 25, 2014. The tenant stated that he was forced to leave the rental unit on October 13, 2014 and that he removed his possessions from the rental unit on October 25, 2014. Monthly rent in the amount of \$400.00 was payable on the first day of each month. The landlord confirmed that a written tenancy agreement governed this tenancy but neither party provided a copy for this hearing. The tenant occupied one room in a house.

Both parties agreed that a security deposit of \$200.00 was paid by the tenant and the landlord returned \$150.00 to the tenant on November 3, 2014 and retained \$50.00. The landlord stated that she retained \$50.00 because the tenant acknowledged that a drawer was missing in the rental unit and that this was the cost to cover replacement. The landlord testified that the tenant provided a forwarding address in writing by way of a letter to the landlord, dated October 18, 2014, which was received on the same date. The landlord confirmed that the tenant did not provide written permission to the landlord to retain any amount from his security deposit. The landlord confirmed that no application for dispute resolution was filed by the landlord to retain any amount from the tenant's security deposit. The tenant seeks a return of double his security deposit, totalling \$400.00, minus the \$150.00 already returned to him.

The tenant also seeks \$245.16 of prorated rent already paid to the landlord for the period from October 13 to 31, 2014. The tenant stated that he was forced to vacate his rental unit on October 13, 2014, due to his roommate, F, who yelled at him, "freaked out" and waived his fingers in front of the tenant's face, on that same date. The tenant stated that he called the non-emergency police telephone line and reported the above incident with his roommate. The tenant indicated that the police spoke with his roommate, that he was told that his roommate agreed not to hurt the tenant and when the tenant returned to the rental unit on the police's advice, his roommate cried, yelled and tried to hug him. The tenant explained that when his roommate approached to hug

him, the tenant extended his foot in an attempt to block his roommate. The tenant maintained that his roommate then alleged that the tenant assaulted him. The tenant subsequently called the police again, who advised him that it was unsafe to return to the rental unit. The tenant stated that he had police file numbers and a business card in his possession, but that he did not submit this information for this hearing. No police officers testified at this hearing on behalf of the tenant. The tenant testified that he slept in a cafeteria on October 13, 2014, stayed with a neighbour for free for a subsequent week and then began renting the place with his neighbour for a further 6 weeks at a reduced cost of \$60.00 per week.

The landlord stated that after receiving notice from the tenant about his roommate's behaviour on October 13, 2014, she went to the Residential Tenancy Branch ("RTB") the next day on October 14 in order to get some advice. The landlord stated that she subsequently spoke with the tenant's roommate twice and the roommate indicated that he did not do anything to the tenant, that he tried to help the tenant and that he thought that the tension was due to a cultural difference between the two men. The landlord stated that she did what she could to help the situation. The landlord indicated that she offered to help the tenant vacate the rental unit but the tenant refused.

The tenant stated that he did not occupy the rental unit from October 13 to October 25, when he returned only to remove his belongings. The tenant stated that he is entitled to a return of the rent paid, as he was forced to leave the rental unit for the above period. The landlord stated that the tenant did not provide at least one month's notice to vacate, as he only provided a letter, dated October 18, 2014, indicating that he had already left the unit on October 13. The landlord stated that she was unable to re-rent the unit until November 21, 2014, and so she is entitled to keep the rent that the tenant paid for the full month of October 2014.

The tenant stated that he believes that the landlord tried to have his roommate intimidate him in order to force the tenant to vacate the rental unit without having to issue a 2 Month Notice to End Tenancy for Landlord's Use of Property ("2 Month Notice"). The tenant noted that the landlord likely wanted to avoid paying one month's rent compensation to the tenant, pursuant to section 51 of the *Act*. The tenant stated that the rental house was sold and then demolished in February 2015 and he believes that his roommate received a 2 Month Notice to vacate. The landlord denied the tenant's claims, stating that she did not ask the tenant's roommate to intimidate him in order to force him to leave. The landlord indicated that her house was sold and then demolished at the end of April 2015 and that 2 Month Notices were issued to other tenants in the rental house at the end of January 2015. The landlord explained that the

tenant left at the end of October 2015, which was too far removed in time and that the tenant's explanation was implausible.

### Analysis

While I have turned my mind to all the documentary evidence and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the tenants' claims and my findings around each are set out below.

### Security Deposit

Section 38 of the *Act* requires the landlord to either return the tenants' security deposit or file for dispute resolution for authorization to retain the deposit, within 15 days after the later of the end of a tenancy and the tenants' provision of a forwarding address in writing. If that does not occur, the landlord is required to pay a monetary award, pursuant to section 38(6)(b) of the *Act*, equivalent to double the value of the security deposit. However, this provision does not apply if the landlord has obtained the tenants' written authorization to retain all or a portion of the security deposit to offset damages or losses arising out of the tenancy (section 38(4)(a)) or an amount that the Director has previously ordered the tenant to pay to the landlord, which remains unpaid at the end of the tenancy (section 38(3)(b)).

The tenant seeks the return of double the value of his security deposit, minus the portion already returned to him. The tenant provided his written forwarding address to the landlord, who acknowledged receipt on October 18, 2014. The tenancy ended on the October 25, 2014. The tenant did not give the landlord written permission to retain any amount from his deposit. The landlord did not return the deposit to the tenant or make an application for dispute resolution to claim against this deposit, within 15 days of October 25, 2014. Over the period of this tenancy, no interest is payable on the landlord's retention of the deposit. In accordance with section 38(6)(b) of the *Act*, I find that the tenant is entitled to double the value of his security deposit totalling \$400.00, minus the \$150.00 portion already returned to the tenant.

### Monetary Loss

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 or 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 tenant to prove, on a balance of probabilities, that the landlord caused him loss by failing to address the issues with the tenant's roommate and failing to ensure the tenant's quiet enjoyment of the rental unit.

To prove a loss, the tenant must satisfy the following four elements:

1. Proof that the damage or loss exists;
2. Proof that the damage or loss occurred due to the actions or neglect of the other party in violation of the *Act*, *Regulation* or tenancy agreement;
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
4. Proof that the applicant followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

On a balance of probabilities, I find that the tenant provided insufficient evidence to show that he is entitled to a return of his rent in the amount of \$245.16. I accept the tenant's evidence that he left the rental unit due to his roommate's behaviour. However, I find that the tenant has failed to meet his onus regarding the second part of the test above. I find that the tenant has failed to show that the actions or neglect of the landlord, in violation of the *Act*, *Regulation* or tenancy agreement, caused him to leave the rental unit and suffer a loss of rent.

While the tenant has found his roommate's actions upsetting, his unsatisfactory interactions with his roommate are not necessarily subject to intervention by his landlord. Residing in a multi-unit rental building sometimes leads to disputes between tenants. When concerns are raised by one of the tenants, a landlord must balance her responsibility to preserve one tenant's right to quiet enjoyment against the rights of the other tenant who is entitled to the same protections, including the right to quiet enjoyment, under the *Act*. A landlord may often try to mediate such disputes if she can, but sometimes more formal action is required.

The landlord stated that she approached the RTB for advice and then spoke with the tenant's roommate on October 14, in order to resolve the situation. The landlord was given an explanation by the roommate, yet the tenant had already left the rental unit by October 13 and chose not to return. Both parties provided a copy of a letter, dated October 18, 2014, from the tenant to the landlord which states, in part: "*I thank you for your follow up with my report to police and your attempt to reconcile the situation but given the previous incident and in view of the previous failed attempt by police to reconcile I remain of the opinion that it is appropriate to avoid returning...*" Therefore, I find that the tenant acknowledged the landlord's attempt to resolve the situation but that

the tenant chose to leave of his own accord. I find that the landlord, within her ability as a landlord, attempted to resolve the situation once notified by the tenant, to ensure the tenant had quiet enjoyment of the rental unit as per section 28 of the *Act*. Therefore, I find that the tenant has failed to establish his claim for a monetary loss in the amount of \$245.16 and it is therefore dismissed without leave to reapply.

As the tenant was only partially successful in his Application, he is entitled to recover half the filing fee, totalling \$25.00, from the landlord.

### Conclusion

I issue a monetary Order in the tenant's favour in the amount of \$275.00 against the landlord under the following terms:

<b>Item</b>	<b>Amount</b>
Return of Double Security Deposit as per section 38 of the <i>Act</i> ( $\$200.00 \times 2 = \$400.00$ )	\$400.00
Less returned portion of security deposit	-150.00
Recovery of Filing Fee for Application	25.00
<b>Total Monetary Order</b>	<b>\$275.00</b>

The tenant is provided with a monetary order in the above terms and the landlord must be served with this Order as soon as possible. Should the landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order 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: July 06, 2015

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Residential Tenancy Branch