



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDC, MNSD, FF

### Introduction

This hearing dealt with the tenant's Application for Dispute Resolution seeking a monetary order.

The hearing was conducted via teleconference and was attended by the tenant.

The tenant provided documentary evidence to confirm the landlord was served with the notice of hearing documents and this Application for Dispute Resolution, pursuant to Section 59(3) of the *Residential Tenancy Act (Act)* by registered mail on December 12, 2014 in accordance with Section 89. Section 90 of the *Act* deems documents served in such a manner to be received on the 5<sup>th</sup> day after they have been mailed.

Based on the documentary evidence of the tenant, I find that the landlord has been sufficiently served with the documents pursuant to the *Act*.

### Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to a monetary order for compensation; for all or part of the security deposit and to recover the filing fee from the tenant for the cost of the Application for Dispute Resolution, pursuant to Sections 32, 38, 67, and 72 of the *Act*.

### Background and Evidence

The tenant has submitted into evidence a copy of a tenancy agreement signed by the parties on February 6, 2010 for a 1 year and 1 day fixed term tenancy beginning on March 15, 2010 for a monthly rent of \$1,375.00 due on the 1<sup>st</sup> of each month with a security deposit of \$690.00 and a pet damage deposit of \$310.00 paid.

The agreement stipulated that rent included a washer and dryer and hot water. The tenancy ended when the tenant vacated the rental unit March 15, 2015.

The tenant submits that he was without a washing machine for the period of April 2011 to December 2011. He states that he attempted to inform the landlord by text but the landlord failed to reply until the landlord and tenant actually spoke in August of 2011. The tenant seeks \$200.00 per month for 9 months as compensation. The tenant also seeks compensation for cleaning of carpets after the landlord installed the washer and dryer in the amount of \$200.00.

The tenant also submits that on two occasions the hot water system in the rental unit failed and he was without hot water for 24 days in August 2011 and for 15 days in February 2013. The tenant seeks the equivalent of 1 months' rent for each of the occurrences. At the time of the August 2011 failure the rent was \$1,375.00 and at the time of the February 2013 failure rent was \$1,443.75.

The tenant has submitted into evidence a copy of the letter and Canada Post receipts dated April 23, 2013 for providing his forwarding address to the landlord. The tenant submits he has not received either his security deposit or his pet damage deposit from the landlord. The tenant seeks return of double of both deposits.

### Analysis

Section 32(1) of the *Act* requires the landlord must provide and maintain residential property in a state of decoration and repair that complies with the health, safety, and housing standards required by law and having regard to the age, character and location of the rental unit make it suitable for occupation by a tenant.

In addition, the landlord must provide all services and facilities outlined in the tenancy unless he officially restricts or cancels them in accordance with Section 27. Section 27 of the *Act* states a landlord must not terminate or restrict a service or facility if the service or facility is essential to the tenant's use of the rental unit as living accommodation or providing the service or facility is a material term of the tenancy agreement.

I find the provision of hot water is essential to the tenant's use of the rental unit. Based on the tenant's undisputed evidence and testimony I find the landlord failed to provide the tenant with hot water for the periods described above. While I accept that the value of the tenancy was reduced during this period I find the tenant's claim for the return of

rent for these respective periods is exorbitant. I grant the tenant \$500.00 for each of the periods that he went without hot water, for a total of \$1,000.00.

The section goes on to state that the landlord may restrict or terminate a service or facility that is not essential or a material term if the landlord gives 30 days' written notice of the termination or restriction, and reduces the rent in an amount that is equivalent to the reduction in the value of the tenancy agreement resulting from the termination or restriction of the service or facility.

While I do not find that the provision of a washing machine is essential to the tenant's use of the rental unit I do find that the landlord did not restrict or terminate the service with the required notice or rent reduction. I find, based on the tenant's undisputed testimony and evidence, the landlord failed to repair the washing machine within a reasonable time which resulted in the loss of the service for a period of 9 months. I find the tenant's claim of \$200.00 per month for this loss to be reasonable.

Based also on the tenant's undisputed evidence and testimony I find the tenant incurred costs for cleaning the carpet after installation of the replacement washing machine and dryer. I find the tenant is entitled to compensation in the amount of \$200.00.

Section 38(1) of the *Act* stipulates that a landlord must, within 15 days of the end of the tenancy and receipt of the tenant's forwarding address, either return the security deposit or file an Application for Dispute Resolution to claim against the security deposit. Section 38(6) stipulates that should the landlord fail to comply with Section 38(1) the landlord must pay the tenant double the security deposit.

Based on the tenant's undisputed evidence and testimony I find the tenant served the landlord with his forwarding address on April 23, 2013. Allowing 5 days for the registered mail to be delivered I find the landlord received the tenant's forwarding address by April 30, 2013. As such, I find the landlord had until May 15, 2013 to either return the deposits, in full, or file an Application for Dispute Resolution to claim against the deposits to be compliant with Section 38(1).

As there is no evidence before that the landlord filed an Application for Dispute Resolution and the tenant submits he has not received the deposits I find the landlord failed to comply with Section 38(1) and the tenant is entitled to double the amounts of both deposits pursuant to Section 38(6).

### Conclusion

I find the tenant is entitled to monetary compensation pursuant to Section 67 and I grant a monetary order in the amount of **\$5,100.00** comprised of \$1,800.00 compensation for washing machine; \$1,000.00 compensation for lack of hot water; \$200.00 carpet cleaning; \$2,000.00 for return of double the pet damage deposit and security deposit and the \$100.00 fee paid by the tenant for this application.

This order must be served on the landlord. If the landlord fails to comply with this order the tenant may file the order in the Provincial Court (Small Claims) and be 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 14, 2015

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Residential Tenancy Branch

