



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes                      DRI, MNR, MNSD, MNDC, FF

### Introduction

This hearing was convened in response to an application by the Tenant pursuant to the *Residential Tenancy Act* (the “Act”). The Tenant confirmed that the tenancy had ended, there are no emergency repairs and the following Orders are being sought:

1. A Monetary Order for compensation - Section 67;
2. An Order for the return of the security deposit - Section 38; and
3. An Order to recover the filing fee for this application - Section 72.

The Landlord and Tenant were each given full opportunity under oath to be heard, to present evidence and to make submissions.

### Preliminary Matter

The Landlord states that an approximate 10 page evidence package containing written submissions was provided to both the Residential Tenancy Branch and the Tenant on July 23, 2015. The Landlord states that this was provided to the RTB through a service agency and the package was date stamped. The Landlord states that the package was sent by mail to the Tenant at the address contained in the application. It is noted that no evidence package from the Landlord is present in the RTB materials. The Tenant states that no evidence package was received. The Tenant also states that he no longer resides at the address set out in the evidence package but that if something had come to that address the Tenant would have been informed.

Given the Landlord’s evidence of how the package was provided and processed to the RTB, I accept that this evidence may not currently be available due to RTB error. Given the evidence

is comprised of written submissions I find that it is not necessary to delay the hearing as the Landlord may provide oral evidence of the submissions.

Issue(s) to be Decided

Are the Tenants entitled to compensation?

Are the tenants entitled to return of the security deposit?

Background and Evidence

The following are agreed facts: On September 28, 2014 the Parties signed an agreement, drafted by the Landlord, for the Tenant to rent a loft starting October 1, 2014 in the unit occupied and being rented by the Landlord from a third party. The rent payable on the 22<sup>nd</sup> of each month is \$375.00. Although not noted in the written agreement the Landlord collected \$187.50 as a security deposit. The agreement notes that "shared areas are to be kept clean at all time". Although not noted in the written agreement the shared areas are the living room, kitchen and bathroom. The Tenant moved out of the unit on January 29, 2015 with no notice to the Respondents.

The Tenant states that the security deposit has not been returned to the Tenant and the Tenant claims its return. The Tenant states that his forwarding address was provided in the application. The Tenant provided its current forwarding address to the Landlord at the hearing.

The Tenant states that he was forced to move out of the unit as the unit was uninhabitable due to the presence of rodents and that the Landlord was doing nothing to address the problem. The Tenant states that there was also a lot of chaos and use of drugs in the unit. The Tenant states that the environment was unsafe, hostile and dangerous and put the Tenant under stress. The Tenant states that he was homeless for a week and then couch surfed for another two weeks until he found another rental. The Tenant claims \$300.00 paid for the two weeks of couch surfing. The Tenant has no receipt or invoice for this amount. The Tenant claims \$200.00 for being homeless in the cold for the first week.

The Tenant states that the Landlord consumed the Tenant's food during the tenancy and claims \$246.86 for the cost of the food. The Tenant states that there was no agreement on splitting the food purchased or splitting the costs of the food. The Tenant states that he did the cleaning of

the unit that was to be shared and claims \$2,152.50 for his labour. The Tenant states that he incurred costs to purchase flash drives to collect and provide evidence for this dispute. The Tenant claims \$20.00. It is noted that no monetary worksheet was submitted with the Tenant's application.

The Landlord states that they are not the Landlords and that the relationship between the Parties is that of roommates. The Landlord states that the rodents were addressed and the exterminator came on January 30, 2015. The Landlord states that they all took turns with cleaning the unit. The Tenant states that the drugs and chaos started when the Tenant moved his girlfriend into the unit without the consent of the Landlord. The Landlord states that there were problems with this woman as she was a "meth head". The Landlord states that the Tenant left of his own accord and wrote the Landlord a note to this effect. The note dated January 29, 2015 included with the Tenant's evidence package is signed by the Tenant and reads as follows: "Please honour our contract with AP until the 18<sup>th</sup> of February. Sell my possessions. I'm leaving Canada in pursuit of a meaningful life." The Landlord states that the Tenant's belongings went to his girlfriend and a charity. The Landlord states that the Parties did share food and costs but that the Tenant's costs for food went up because the Tenant ate more. The Landlord states that the Tenant has contradicted the amounts being claimed within his evidence package and that the damage listed in the evidence package is less than what the Tenant now claims.

### Analysis

Section 2 of the Act provides that the Act applies to tenancy agreements and rental units. Given the evidence of the written agreement for the Tenant to use and occupy the unit for a monthly amount and considering that the Landlord accepted a security deposit, I find on a balance of probabilities that the Landlord is correctly named and is the Landlord in this relationship. I find that the Act therefore applies to the relationship as a tenancy.

Section 38 of the Act provides that within 15 days after the later of the date the tenancy ends, and the date the landlord receives the tenant's forwarding address in writing, the landlord must repay the security deposit or make an application for dispute resolution claiming against the security deposit. Where a Landlord fails to comply with this section, the landlord must pay the

tenant double the amount of the security deposit. As the Tenant has yet to provide its forwarding address in writing other than as contained in the application, I consider that the Landlord's obligation to deal with the security deposit under this section has not been triggered. As the Tenant has now provided its forwarding address to the Landlord I find that the Landlord's obligation to act on the security deposit is now triggered and I order the Landlord to deal with the security deposit within 15 days from the date of this hearing. The Tenant's claim for the return of the security deposit is dismissed with leave to reapply should the Landlord fail to act as ordered. The Landlord was provided with the order to deal with the security deposit orally at the hearing.

Section 7 of the Act provides that where a tenant does not comply with the Act, regulation or tenancy agreement, the tenant must compensate the landlord for damage or loss that results. In a claim for damage or loss under the Act, regulation or tenancy agreement, the party claiming costs for the damage or loss must prove, inter alia, that the damage or loss claimed was caused by the actions or neglect of the responding party. Reviewing the submitted materials and oral evidence I have no doubt that the Tenant was under stress while living at the unit. However given the Tenant's note dated January 29, 2015 and considering the evidence of the role of the Tenant's girlfriend in creating chaos, I find it more likely that the Tenant left on his own accord and not for the reasons stated at the hearing. As a result I find that the Tenant has not substantiated that the Landlord did by act or negligence cause the tenancy to end or that the Landlord was responsible for the Tenant's living situation after the Tenant left the unit. I therefore dismiss the claims for compensation in relation to the end of the tenancy.

Section 6 of the Act provides that the rights, obligations and prohibitions established under this Act are enforceable between a landlord and tenant under a tenancy agreement. This section further provides that a term of a tenancy agreement is not enforceable if the term is not expressed in a manner that clearly communicates the rights and obligations under it. Given the lack of any terms in the written agreement for the sharing of food costs and considering that the oral evidence is vague and disputed, I find that the Tenant has failed to establish that food costs are included in the tenancy agreement and I dismiss this claim. Although cleaning is noted in the written agreement, there are no further details and I consider this term to be so vague that it not enforceable. I therefore dismiss the claim for cleaning.

As the only costs of the dispute process that a party is entitled to claim is the filing fee and as the costs of the flash drives are related to the provision of evidence, I dismiss this claim. As the Tenant's application has not been successful I dismiss the claim for recovery of the filing fee.

Conclusion

The Tenant's claim for the return of the security deposit is dismissed with leave to reapply. The remaining claims are dismissed.

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: August 21, 2015

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Residential Tenancy Branch

