



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNR, MNDC, MNSD, FF, O

### Introduction

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

- a monetary order for the cost of emergency repairs to the rental unit pursuant to section 33;
- a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- authorization to obtain a return of all or a portion of her security deposit pursuant to section 38; and
- authorization to recover his filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing by conference call and gave affirmed testimony. The landlord confirmed receipt of the tenant's notice of hearing package. Both parties confirmed in their direct testimony receipt of the documentary evidence submitted by the other party. As such, I find that both parties have been properly served as per section 88 and 90 of the Act.

### Issue(s) to be Decided

Is the tenant entitled to a monetary order for the cost of emergency repairs, for the return of double the security deposit, for recovery of an overpayment of rent due to an illegal rent increase and recovery of the filing fee?

### Background and Evidence

Both parties agreed that the landlord assumed the tenancy in 2011 after purchasing the property and that the rent was \$650.00 per month.

Both parties agreed that a new signed tenancy agreement was made dated May 30, 2011 stating that a fixed term tenancy for a 6 month period ending on December 31, 2011 for \$700.00 per month payable on the 1<sup>st</sup> day of each month. A security deposit of \$325.00 was paid.

Both parties also agreed that on October 2, 2012 a new signed tenancy agreement was made for a fixed term tenancy for 12 months ending on September 30, 2013 in which the monthly rent of \$730.00 was to begin on February 1, 2013. The \$325.00 security deposit was carried over. Both parties confirmed that this tenancy ended on August 31, 2014.

The tenant seeks a monetary claim of \$2,413.69 which consists of:

Return of double the security deposit of \$325.00	\$650.00
Recovery of Emergency Repairs (Electrical Breaker)	\$320.00
Recovery of Overpayment of Rent (2011-2012)	\$1,343.69
Recovery of the Filing Fee	\$50.00

Both parties confirmed in their direct testimony that the tenant sent his new mailing address by Canada Post Registered Mail on September 16, 2014. Both parties confirmed in their direct testimony that the contents of the letter showed only the tenant's new mailing address with no other details. The landlord argued that he did not realise that the new mailing address was for the return of the tenant's forwarding address and that that he understood it was for the tenant's mail.

The tenant stated that he paid \$320.00 for the cost of repairing an electrical breaker and that the tenant was "mislead" by the landlord that this was a repair that the tenant was responsible for. The landlord provided both verbal and written submissions that the tenant was using an excessive number of electronic devices on a small circuit as he was operating a "day trading" business in the rental premises. The landlord stated that the tenant had every power outlet connected with multiple power bars fully loaded with electronic devices. The landlord stated that having this many devices caused the heat to rise in the premises. Both parties confirmed their evidence that the tenant in an attempt to address the higher temperature, installed an air conditioner which caused the circuit to overload and damage the electrical breakers. Both parties confirmed that the tenant voluntarily paid this cost. The tenant stated that he was "lied to" and intimidated" into paying for something that he was not responsible for. The landlord argued that no

force or intimidation was used for the tenant to pay for the repairs and that tenant willingly did so as he felt responsible for the damage.

The tenant also seeks recovery of \$1,393.69 for the overpayment of rent for 2011 and 2012. The tenant stated that he entered into a new signed tenancy agreement with the landlord on May 30, 2011 after the landlord told him that his agreement with the previous landlord was "null and void". The landlord disputed this claim stating that a new tenancy agreement was entered into at an agreed monthly rent as shown by the two separate copies of the signed tenancy agreements. The landlord stated that the tenant was free to refuse and not enter into a new agreement. The landlord stated that this further shown by term 8 of the October 2, 2012 agreement which states,

The rent increase is to take in effect Feb 1/ 2013. For the month of Feb/ 2013 onwards the rent will be \$730.00.

### Analysis

Section 38 of the Act requires the landlord to either return all of a tenant's security deposit or file for dispute resolution for authorization to retain a security deposit within 15 days of the end of a tenancy or a tenant's provision of a forwarding address in writing. If that does not occur, the landlord is required to pay a monetary award pursuant to subsection 38(6) of the Act equivalent to the value of the security deposit. However, pursuant to paragraph 38(4)(a) of the Act, this provision does not apply if the landlord has obtained the tenant's written authorization to retain all or a portion of the security deposit to offset damages or losses arising out of the tenancy.

In this case, it is clear based upon the landlord's direct testimony that he failed to return the \$325.00 security deposit within 15 days after he received the tenant's forwarding address in writing sent on September 16, 2015 by Canada Post Registered Mail. The landlord failed to make an application for dispute resolution to dispute the return of the security deposit.

I find on a balance of probabilities that it is unlikely that the landlord did not realize that the tenant's letter sent in this fashion with only his new mailing address would not be for the return of the security deposit as opposed to just being for the forwarding of mail. The landlord did not have authorization from the tenant to retain the security deposit nor did the landlord file an application for dispute resolution to dispute the return of the security deposit. As such, I find that the landlord was deemed to have been served with the tenant's forwarding address in writing on September 21, 2015 as per section 88 and 90 of the Act. I find that the landlord failed to return the \$325.00 security deposit as per

section 38 and that the tenant is entitled to the monetary claim of the return of double the security deposit of \$650.00. The tenant has been successful in this portion of the claim.

As for the tenant's claim to recover \$320.00 in costs for recovery of an electrical breaker repair, I find that the tenant has failed to establish a claim. The tenant by his own words and confirmed by the landlord voluntarily paid this cost. The tenant stated, "I paid it because I didn't want my stuff on the curb." The tenant alleges that the landlord would have removed all of the tenant's belongings on the curb by evicting him. The landlord has disputed this claim and the tenant has failed to provide any supporting evidence.

Section 32 (3) of the Act requires a tenant to repair damage to the rental unit or common areas that was caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant. Caused means that the actions of the tenant or his visitor logically led to the damage of which the landlord complains.

In this case, I accept the evidence of both parties that an electrical breaker required repair due to an excessive usage of power at the rental premises which was caused by the tenant's air conditioner. I find that the tenant has failed to establish any entitlement for this claim. This portion of the tenant's claim is dismissed.

The tenant's claim for \$1,393.69 in the overpayment of rent for 2011 and 2012 has not been established. The landlord disputed this claim stating that these were new agreements made and not rent increases of an existing agreement that would allow for the fixed rate of rental increases prescribed by the Residential Tenancy Branch. This is shown in the undisputed copies of the signed agreements provided by the landlord. The tenant confirmed that it was through his own lack of knowledge that he did not realize that he had a binding tenancy agreement, but accepted entering a new agreement with the landlord. This portion of the tenant's application is dismissed.

As the tenant was partially successful in this application, I find that the tenant is entitled to recover the \$50.00 filing fee paid for this application.

### Conclusion

I issue a monetary order in the tenant's favour in the amount of \$700.00, which consists of the return of double the \$325.00 security deposit (\$650.00) and recovery of the \$50.00 filing fee.

The tenant is provided with this order in the above terms and the landlord(s) must be served with this order as soon as possible. Should the landlord(s) fail to comply with this order, this order may be filed in the Small Claims Division of the Provincial Court and enforced as orders 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: October 2, 2015

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Residential Tenancy Branch

