



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MND, MNSD, FF; MNSD, OLC, FF

### Introduction

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

- a monetary order for damage to the rental unit, pursuant to section 67;
- authorization to retain the tenant's security deposit in partial satisfaction of the monetary order requested, pursuant to section 38; and
- authorization to recover the filing fee for this application from the tenant, pursuant to section 72.

This hearing also dealt with the tenant's application pursuant to the *Act* for:

- authorization to obtain a return of double the amount of the security deposit, pursuant to section 38;
- an order requiring the landlord to comply with the *Act*, *Residential Tenancy Regulation* ("Regulation") or tenancy agreement, pursuant to section 62; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72.

Both parties attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. At the outset of the hearing, the landlord testified that although he had just been released from the hospital recently due to a broken hand, he did not require an adjournment of this hearing to a later date. This hearing lasted approximately 57 minutes in order to allow both parties to fully present their submissions.

Both parties confirmed receipt of the other party's application for dispute resolution hearing package. In accordance with sections 89 and 90 of the *Act*, I find that both parties were duly served with the other party's application.

### Issues to be Decided

Is the landlord entitled to a monetary award for damage arising out of this tenancy?

Is the landlord entitled to retain the tenant's security deposit in partial satisfaction of the monetary award requested?

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 an order requiring the landlord to comply with the *Act*, *Regulation* or tenancy agreement?

Is either party entitled to recover the filing fee for their application?

### Background and Evidence

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

The landlord stated that this tenancy began on April 15, 2013 while the tenant stated that it began around mid-May 2013. Both parties agreed that this tenancy ended on May 11, 2015. Monthly rent in the amount of \$2,800.00 was payable on the first day of each month. Both parties agreed that a security deposit of \$1,400.00 was paid by the tenant and the landlord continues to retain this deposit. The landlord stated that a written tenancy agreement governs this tenancy but the tenant disagreed. A copy of a written tenancy agreement was not provided for this hearing. The rental unit is a house.

Both parties agreed that no move-in or move-out condition inspection reports were completed for this tenancy. Both parties agreed that the tenant provided a forwarding address by way of a text message on May 12, 2015. The landlord testified that he did not have written permission from the tenant to retain any amount from his security deposit. The landlord confirmed that his application was filed on June 8, 2015.

Both parties agreed that approximately two weeks after the end of this tenancy, the tenant received \$2,800.00 in compensation from the landlord, pursuant to section 51 of the *Act* and a 2 Month Notice to End Tenancy for Landlord's Use of Property, dated April 30, 2015 ("2 Month Notice"), that was issued to the tenant. Both parties agreed

that the reason for issuing the 2 Month Notice was due to the sale of the rental unit. Both parties agreed that this compensation was not a return of the security deposit. Both parties agreed that the tenant paid pro-rated rent from May 1 to 11, 2015, after giving the landlord ten days' notice to vacate, prior to the effective date of July 1, 2015 on the 2 Month Notice.

The landlord seeks \$3,000.00 for damage to three refrigerators in the rental unit. The landlord stated that he purchased these refrigerators four months before the tenant moved into the unit, as the house was new. He explained that one was a counter-size beverage refrigerator, one was a counter-size wine cooler and one was a full-size refrigerator. He stated that the full-size refrigerator alone cost over \$5,000.00 and that he had a receipt for this but did not submit it for this hearing. The landlord did not provide photographs of the refrigerators, despite the fact that he said he had photographs of the damage.

The landlord stated that the tenant and his children caused big welts and dents to the outside body of the refrigerators. The landlord explained that he saw the tenant's children banging into the refrigerators with their toys and he confronted the tenant about this damage. The tenant denied the damage to the refrigerators, stating that the worst of the damage was pre-existing and the rest was reasonable wear and tear, for which he was not responsible. The tenant stated that there were some dents to the bottom drawer inside the refrigerator. The tenant noted that there was a pre-existing eye-level dent and scratch to the two small counter-size refrigerators. Both parties agreed that the landlord lived in the rental unit for approximately four months before the tenant moved into the unit. The tenant said that the landlord caused the damage during this time, while the landlord denied this fact. The landlord stated that he advised the tenant about this damage during the visual move-out inspection on May 11, 2015. The tenant denied this statement, indicating that the landlord advised him there was nothing to repair in the rental unit when he was vacating.

The landlord stated that his realtors were witnesses as to the condition of the refrigerators and the fact that he had to deduct \$3,000.00 from the selling price of the house, to account for the damage to the refrigerators. He indicated that the damage was not readily apparent, due to the shiny nature of the fridge, during the first visual inspection by the realtors but it was noticed during the second inspection. He explained that the possession date for the new owners was on June 1, 2015. The tenant stated that after the first inspection on April 30, 2015, he was given a list of things to be fixed for the landlord's realtors and the refrigerators were not on the list.

The landlord stated that he provided a letter, dated June 8, 2015, advising the tenant that he would be retaining the tenant's security deposit of \$1,400.00 to pay for the

damage to the refrigerators, as the tenant did not fix them. The tenant confirmed that he received the landlord's letter but that he did not agree to the landlord retaining his deposit.

The landlord applied to offset the security deposit of \$1,400.00 against the monetary order of \$3,000.00. The tenant requested an order for the landlord to comply with section 38 of the *Act*, by returning double the amount of the security deposit totaling \$2,800.00, for the landlord's failure to return it within 15 days of the end of the tenancy and providing a written forwarding address. Both parties also applied to recover the \$50.00 filing fee for their respective application.

### Analysis

#### Landlord's Application

Section 67 of the *Act* requires a party making a claim for damage or loss to prove the claim, on a balance of probabilities. In this case, to prove a loss, the landlord 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 tenant in violation of the *Act*, *Residential Tenancy 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 landlord followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

I dismiss the landlord's claim for \$3,000.00 for damage to the three refrigerators, without leave to reapply. The landlord did not provide any documentary evidence to support his claim for damages. The landlord stated that he would submit this evidence for an action in Small Claims Court regarding this matter. When I advised the landlord that the Residential Tenancy Branch is the appropriate venue for residential tenancy matters such as this (as per section 58(3) of the *Act*), as it has exclusive jurisdiction over these matters, the landlord stated that he was sick for the past three months and unable to submit evidence for this reason. I note that the landlord had over five months to prepare for this hearing, as his application was filed on June 8, 2015 and this hearing occurred on November 12, 2015. I note that the landlord cannot file the same claim in Small Claims Court regarding this matter.

The landlord did not provide an invoice for the purchase of the three refrigerators when he first bought them. He did not provide any documentation to support his contention that \$3,000.00 was deducted from the selling price of the house. The landlord did not produce the realtors as witnesses at this hearing. He did not provide any photographs to show the condition of the refrigerators when the tenant moved in or out. The landlord did not complete any move-in or move-out condition inspection reports to show the condition of the refrigerators or to demonstrate any damage to the refrigerators.

I find that the landlord was unable to show what, if any, damage was caused by the tenant to the refrigerators. Although the tenant acknowledged that there were some small dents, he stated that this was either pre-existing damage or reasonable wear and tear. The landlord has failed to prove otherwise, as no documentary evidence was submitted to confirm any damage and the landlord lived in the rental unit with the refrigerators prior to the tenant moving in.

Residential Tenancy Policy Guideline 1 states that the landlord is responsible for repairs to appliances unless the damage was caused by the deliberate actions or neglect of the tenant. I find that the landlord failed to prove damage to the refrigerators due to the tenant's deliberate actions or neglect. As it is the landlord's burden of proof on a balance of probabilities, I find that the landlord has failed to meet the above test.

As the landlord is not entitled to a monetary award, his application to retain the tenant's security deposit to offset the monetary award for damage, is dismissed without leave to reapply.

As the landlord was unsuccessful in this Application, I find that the landlord is not entitled to recover the \$50.00 filing fee from the tenant. The landlord must bear the cost of this filing fee.

### *Tenant's Application*

The tenant seeks a return of double the amount of the security deposit from the landlord, totalling \$2,800.00.

Section 38 of the *Act* requires the landlord to either return the tenant's 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 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 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 tenant's 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)).

Both parties agreed that the tenant provided a written forwarding address by way of a text message. This service method is not permitted by section 88 of the *Act*. However, the landlord confirmed that he received this address from the tenant and he listed this address on his application. The landlord even provided a copy of the text message with the forwarding address from the tenant, dated May 12, 2015. Therefore, in accordance with section 71(2)(c) of the *Act*, I find that the landlord was sufficiently served with the tenant's forwarding address for the purposes of the *Act*.

The tenancy ended on May 11, 2015. The tenant did not give the landlord written permission to retain any amount from his deposit. The landlord did not return the full deposit to the tenant or make an application for dispute resolution to claim against this deposit, within 15 days of the end of this tenancy. The landlord's application was made on June 8, 2015.

I find that the landlord's right to file an application to claim for damage against the deposit was extinguished because he failed to complete move-in and move-out condition inspection reports, as required by sections 24 and 36 of the *Act*. Accordingly, Residential Tenancy Policy Guideline 17 requires me to double the value of the security deposit of \$1,400.00. Therefore, I find that the tenant is entitled to double the value of his security deposit from the landlord, totalling \$2,800.00.

As this tenancy has ended and I have issued the above monetary order, the tenant's application for an order requiring the landlord to comply with the *Act*, *Regulation* or tenancy agreement is dismissed without leave to reapply.

As the tenant was mainly successful in his application, I find that he is entitled to recover the \$50.00 filing fee from the landlord.

### Conclusion

I issue a monetary order in the tenant's favour in the amount of \$2,850.00 against the landlord. 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.

The tenant's application for an order requiring the landlord to comply with the *Act*, *Regulation* or tenancy agreement is dismissed without leave to reapply.

The landlord's entire application is dismissed without leave to reapply.

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: November 25, 2015

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Residential Tenancy Branch

