



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MND, MNDC, MNSD, FF

### Introduction

This hearing was convened in response to an application by the Tenant and an application by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”).

The Tenant applied on June 17, 2015 for:

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 applied on August 18, 2015 for:

1. A Monetary Order for damages to the unit - Section 67;
2. A Monetary Order for compensation - Section 55;
3. An Order to recover the filing fee for this application - Section 72.

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

### Preliminary Matter

The Tenant states that no evidence package from the Landlord has been provided to the Tenant. The Landlord states that it believes that the 5 page evidence package provided to the Residential Tenancy Branch (the “RTB”) on August 18, 2015 was also sent to the Tenant around the same time. The Landlord states that the 3 page evidence package provided to the RTB on October 16, 2015 was also sent to the Tenant however

the Landlord is not clear when or how any of the packages were provided to the Tenant. Given the Landlord's confused and vague evidence in relation to providing evidence to the Tenant I prefer the Tenant's evidence that no such package was provided to the Tenant. I therefore decline to consider the documents contained in the Landlord's evidence packages. The Landlord may provide oral evidence to otherwise support its claims.

The Tenant states that the second named Tenant in the Landlord's application is not a Tenant on the tenancy agreement. Given the evidence provided with the tenancy agreement I find that the Landlord does not have any claim against the second named Tenant and no order in relation to this person will be made.

#### Issue(s) to be Decided

Has the Landlord made its application to retain the security deposit within the time limit?

Has the Tenant left the unit damaged?

Is the Landlord entitled to compensation for its time in collecting rent?

Is the landlord entitled to compensation for lost rental income?

#### Background and Evidence

The tenancy started in 2010 and ended on June 1, 2015. Rent of \$1,460.00 was payable each month. At the outset of the tenancy the Landlord collected \$750.00 as a security deposit. No per deposit was collected. The Parties did mutually conduct a move-in inspection however the Landlord did not complete the report. The Parties mutually conducted a move-out report and the Tenant was provided with a copy of this report. The Tenant's forwarding address was provided on the move-out form dated June 1, 2015. The Landlord had not returned the security deposit to the Tenant.

The Tenant claims return of double the security deposit.

The Landlord states that the Tenant left the bathroom sink clogged and that the Landlord worked for 2-3 hours unplugging the sink. The Landlord states that the

materials found in the sink were dust and hair and not a regular buildup. The Landlord claims \$350.00 for this work. The Tenant states that the sink was slow draining from the onset of the tenancy and that it got slower through the tenancy. The Tenant states that since there was a second bathroom this sink was not used. The Tenant states that the Landlord was informed of the slow drain in December 2014 but no inspection or repair occurred. The Landlord denies being informed about a problem with the sink.

The Landlord states that after the move-out inspection it was discovered that the bathroom timer was not working and that the bathroom fan was disconnected. The Landlord states that it was unaware of the existence of the timer. The Landlord states that an inspection showed that the timer was disconnected and short circuited the fan. The Landlord states that its agent was present for the inspection and that when asked the Tenant told the Landlord that the timer was disconnected or was "just recently broken" and that the Tenant was unable to explain how it broke. The Landlord claims \$250.00 for the repair. The Tenant states that nobody, including the Tenant, knew the existence of the time and it was not discovered until move-out cleaning and the tripping of the breaker.

The Landlord claims personal fees of \$1,500.00 to collect frequent late rent.

The Landlord states that the Tenant left the unit with numerous holes on the walls, some small and pretty small, some were picture nail holes and other holes were 2-3 inches. The Landlord states that the Tenant also left the walls with minor scuffs from furniture. The Landlord states that it painted and patched the walls for 8 hours and claims \$200.00. The Tenant states that no large holes were seen on the move-out walkthrough and nothing was noted on the inspection form.

The Landlord states that due to the required repairs the Landlord was not able to rent the unit and claims lost rental income of \$1,460.00. The Landlord states that the unit was left smelling like smoke and as a result a reduction in rent was experienced. The Landlord states that the repairs took a few weeks and that the unit was advertised

online sometime in July 2015. The Landlord states that the unit was advertised for rent of \$1,500.00. The Landlord states that the unit was rented for August 1, 2015 at this rate for a one year lease.

### Analysis

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. Based on the date of the Landlord's application and the undisputed evidence of the date that the forwarding address was provided, I find that the Landlord failed to make its application within 15 days and must now repay the Tenant double the security deposit in the amount of **\$1,500.00**. As the Tenant has been successful with its application I find that the Tenant is also entitled to recovery of the **\$50.00** filing fee for a total entitlement of **\$1,550.00**.

Section 32(3) provides that a tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant. A tenant is not responsible for reasonable wear and tear. The Landlord has nothing to support its claim that the Tenant acted to cause the sink to become plugged and has not provided evidence of anything significant or untoward being found in the sink. I find therefore that the Landlord has not substantiated that the Tenant caused any problem beyond reasonable wear and tear. I dismiss the plumbing claim. Given the believable evidence that nobody knew about the existence of the timer, I find that the Landlord has not substantiated that the Tenant caused any problem with the timer and I dismiss this claim. Given the Landlord's evidence that some portion of the holes were small and from picture hanging and considering the Tenant's evidence that no large holes were either seen or noted in the move-out inspection, I find that the Landlord has not substantiated that the Tenant caused the walls to be damaged beyond reasonable wear and tear. I dismiss the claim for \$200.00.

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. This section further provides that where a landlord or tenant claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement the claiming party must do whatever is reasonable to minimize the damage or loss. As the Act does not provide for the Landlord to be paid anything more than rent for carrying out its obligations and duties to rent the unit I dismiss the claim for personal fees to collect rent.

As the Tenant has not been found responsible for any damages to the unit I find that the Landlord has not substantiated that the Tenant caused the lost rental income claimed. I also note that by advertising the unit at a higher rental rate the Landlord cannot be found to have taken reasonable steps to reduce the compensation claimed. I therefore dismiss the claims for lost rental income. As none of the Landlord's claims have had merit I find that the Landlord is not entitled to recovery of the filing fee and in effect the application is dismissed in its entirety.

### Conclusion

I grant the Tenant an order under Section 67 of the Act for **\$1,550.00**. If necessary, this order may be filed in the Small Claims 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: November 27, 2015

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Residential Tenancy Branch

