



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDC MNR MNSD FF

### 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; authorization to obtain a return of all or a portion of his security deposit pursuant to section 38; authorization to recover the filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, and to make submissions. Both parties confirmed receipt of the other's evidentiary submissions for this hearing. The landlord was accompanied by an assistant who both translated and made submissions on behalf of the landlord. The tenant was accompanied by an assistant who also translated and made submissions on behalf of the landlord.

### Issue(s) to be Decided

Is the tenant entitled to a monetary order for the cost of (emergency) repairs to the unit?  
Is the tenant entitled to the return of all or a portion of the security deposit?  
Is the tenant entitled to recover the filing fee for this application from the landlord?

### Background and Evidence

This tenancy began on January 1, 2015 with a rental amount of \$650.00 payable on the first of each month. Both parties testified that no written agreement was created for this tenancy. The tenant provided sworn undisputed evidence that he vacated the rental unit on June 30, 2015. He testified that, at the outset of the tenancy he paid the landlord a \$325.00 security deposit. He has applied for the return of that deposit (in double its original amount) as well as the cost of installing hardwood floors within the rental unit.

The landlord testified that he did not receive a security deposit from the tenant. The landlord's assistant stated on behalf of the landlord that this tenancy was scheduled to be very short term and that the landlord did not feel a written tenancy agreement or a security deposit were necessary.

The tenant submitted three letters sent from the tenant to the landlord in July, October and November 2015. The first letter was dated July 20, 2015. The tenant testified that all letters to the landlord were mailed (regular mail) to the landlord on the dates they were written. The tenant submitted copies of the envelopes with stamps used to send the letters to the landlord. Each of the tenant's letters to the landlord provided a forwarding address, requested the return of his security deposit as well as compensation for the installation of hardwood floors in the rental unit.

The tenant's assistant stated that the tenant did not like the hardwood floors at the outset of this tenancy. He stated that the tenant and landlord agreed that the tenant would change the floors and the landlord would pay. The tenant submitted a handwritten generic invoice indicating an amount of \$239.40 for installing hardwood floors in February 2015. The tenant did not submit any photographic evidence or documentary evidence with respect to the installation of flooring. The tenant did not submit a written agreement between the parties with respect to the installation of flooring.

The landlord submitted into evidence a copy of a sworn and notarized affidavit providing his version of events between the landlord and the tenant. In testimony (through his assistant) and in his affidavit, the landlord denied receiving a forwarding address from the tenant until he received the tenant's Application for Dispute Resolution on November 16, 2015. The landlord relied on the lack of provision of formal receipts to support his claim that no security deposit was paid to the landlord for this tenancy. The landlord acknowledges that a verbal tenancy was agreed to by both parties. The landlord denied that the tenant installed floors within the rental unit. His agent testified that the landlord has had the same floors since prior to the start of this tenancy. The landlord's agent submitted that he believes the invoice in the amount of \$239.40 provided by the tenant is fraudulent.

### Analysis

I have considered all of the testimony and documentary evidence submitted by the parties for this hearing, including but not limited to the landlord's affidavit and the tenant's receipt. Given the conflicting testimony of the parties, a determination of credibility must comprise part of my decision making process. In addition to the manner

and tone (demeanour) of the witness' evidence, I have considered their content, and whether the evidence of the parties is consistent with the other events that took place during this tenancy. The demeanor of the parties at the hearing (and testimony through their assistants) has assisted me in making a determination with respect to credibility.

The tenant's assistant presented the tenant's evidence in a calm and candid manner, and never wavered in presenting the tenant's version of events during this tenancy. The documentary evidence submitted supported the tenant's version of events. The contrary evidence submitted by the landlord and his assistant was the notarized statement of the landlord. I find the testimony of both parties more valuable in determining credibility than the affidavit prepared for this hearing.

The tenant's evidence, documentary submissions and submissions at this hearing by his assistant have persuaded me on the balance of probabilities that the tenant paid a \$325.00 security deposit that was not returned. Further, I find, based on the evidence provided that the tenant provided the landlord with his forwarding address on July 20, 2015. Therefore the tenant's application for the return of his security deposit is granted.

With respect to the tenant's security deposit, section 38(1) of the *Act* requires a landlord, within 15 days of the end of the tenancy or the date on which the landlord receives the tenant's forwarding address in writing, to either return the security deposit in full or file an Application for Dispute Resolution seeking an Order allowing the landlord to retain the deposit. If the landlord fails to comply with section 38(1), then the landlord may not make a claim against the deposit, and the landlord must return the tenant's security deposit plus applicable interest and must pay the tenant a monetary award equivalent to the original value of the security deposit (section 38(6) of the *Act*).

With respect to the return of the security deposit, the triggering event is the latter of the end of the tenancy or the tenant's provision of the forwarding address. In this case, the landlord was informed of the forwarding address in writing July 20, 2015 (prior to move out). The landlord had 15 days after July 20, 2015 to either return the tenant's security deposit in full or file an Application for Dispute Resolution to retain the deposit. The landlord did not take either of these steps.

Based on the undisputed sworn evidence of the tenant at this hearing, I find that the landlord has not returned the tenant's \$325.00 security deposit paid at the outset of this tenancy or filed to retain the security deposit. In the circumstances, I find that the tenant is entitled to a monetary order including \$325.00 for the return of the full amount of his security deposit.

Policy Guideline 17 of the Residential Tenancy Branch's Policy Guidelines is relevant to this application. The guideline states,

*Unless the tenant has specifically waived the doubling of the deposit, either on an application for the return of the deposit or at the hearing, the arbitrator will order the return of double the deposit:*

- *If the landlord has not filed a claim against the deposit within 15 days of the later of the end of the tenancy or the date the tenant's forwarding address is received in writing...*

The tenant's assistant provided a consistent version of events throughout the hearing. The tenant's assistant gave evidence that the tenant has not waived his right to obtain a payment pursuant to section 38(4)(a) of the *Act* owing as a result of the landlord's failure to abide by the provisions of that section of the *Act*. Under these circumstances and in accordance with section 38(6) of the *Act*, I find that the tenant is therefore entitled to a total monetary order amounting to double the value of his security deposit (\$650.00) with any interest calculated on the original amount only. No interest is payable for this period.

Given my credibility finding with respect to the parties, I find that the tenant has met the burden to prove that the security deposit was paid at the outset of the tenancy and not returned at the end of the tenancy. However, I find that the tenant did not present sufficient evidence to show that the installation of hardwood floors should be paid by the landlord. Based on consideration of the burden of proof in seeking a monetary award, and consideration of all of the evidence, including testimony, I find that the tenant has not proven that this cost is the responsibility of the landlord.

Section 32 provides that a "landlord must provide and maintain a residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law ..." making it suitable for occupation by a tenant. Pursuant to section 33, a landlord can be held responsible for emergency repairs when they are urgent and relate to health or safety, particularly of primary facilities (ex: heat, water, etc.) I find that, in these circumstances, the replacement of the laminate floor claimed by the tenant does not reflect emergency repairs. The assistant to the tenant stated that the tenant was not satisfied with the floors at move-in and chose to change them. The tenant did not provide sufficient documentary evidence of an agreement between the parties to pay the flooring costs. I find that the tenant is not entitled to recover any flooring costs.

I find that the tenant is entitled to recover his security deposit and a monetary award for the landlord's failure to return the deposit. I find that the tenant is not entitled to recover the cost of laminate flooring. As the tenant was successful in part in his application, I find that the tenant is entitled to recover the filing fee for this matter.

Conclusion

I dismiss the tenant's application (with regard to compensation for the hardwood floor) without leave to reapply.

I issue a monetary order to the tenant as follows,

Item	Amount
Return of Security Deposit	\$325.00
Monetary Award for Landlords' Failure to Comply with s. 38 of the <i>Act</i>	325.00
Recovery of Filing Fee for this Application	50.00
<b>Total Monetary Order</b>	<b>\$700.00</b>

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: June 15, 2016

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Residential Tenancy Branch