



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes                      MNR, MNSD, MNDC, FF

### Introduction

This hearing dealt with the tenant's application for a Monetary Order for the cost of emergency repairs; damage or loss under the Act, regulations or tenancy agreement; and, return of double the security deposit. Both parties appeared or were represented at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

### Preliminary and Procedural Matters

At the beginning of the hearing I confirmed service of hearing documents upon each other and the Branch. I noted that I had the tenant's application, written submissions and a registered mail receipt dated January 7, 2014 but no other evidence. The tenant stated that he had sent the landlord copies of several emails as evidence and acknowledged that they may not have been provided to the Branch. The landlord acknowledged receiving copies of emails in the package the tenant sent her. I also confirmed that the landlord had not served any response or evidence to the tenant or the Branch. As I had not been provided a copy of the emails this decision is made based upon the oral and written submissions, and, registered mail receipt.

As for standing as a landlord, the respondent testified that her parents own the residential property and that she acted as their agent with respect to this tenancy. The definition of "landlord" under the Act includes:

- (a) the owner of the rental unit, the owner's agent or another person who, on behalf of the landlord,
  - (i) permits occupation of the rental unit under a tenancy agreement,
  - or
  - (ii) exercises powers and performs duties under this Act, the tenancy agreement or a service agreement;

[Reproduced as written with my emphasis underlined]

I was satisfied that the respondent meets the definition of landlord and upon informing the respondent of the definition of landlord the respondent appeared to accept that she meets the definition of landlord under the Act.

Issue(s) to be Decided

1. Has the tenant established an entitlement to compensation for the cost of emergency repairs and other damages or loss under the Act, regulations or tenancy agreement?
2. Is the tenant entitled to return of double the security deposit, and interest?

Background and Evidence

The parties provided consistent testimony as to the following facts: The parties executed a written tenancy agreement. The tenancy commenced October 1, 2005. The tenant gave notice to end the tenancy effective December 31, 2013 although keys and possession of the rental unit was returned in early January 2014. The rent was \$850.00 payable on the first day of every month. The tenant paid a security deposit of \$425.00.

The tenant's monetary claim was comprised of two components which I describe below.

**Security deposit**

The tenant seeks return of double the security deposit plus interest of \$15.05 that has accrued since October 1, 2005.

The tenant submitted that he sent his forwarding address to the landlord by way registered mail on January 7, 2014. The tenant provided a registered mail receipt including tracking number as proof of service. The tenant testified that the landlord did not refund the security deposit to him and he did not authorize the landlord to retain the security deposit in writing. The tenant submitted that the parties did exchange emails after the tenancy ended with respect to the landlord's concerns about a missing dryer, among other things, which the tenant did not agree with. The landlord did not file an Application for Dispute Resolution to claim against the security deposit.

The landlord testified that she does not recall receiving the registered mail from the tenant in January 2014. The landlord testified that by way of the emails exchanged she informed the tenant that she owed him money for cleaning, vacating the rental unit late, and a missing dryer. The landlord claimed that in the end the tenant agreed that she may retain the security deposit; however, the landlord acknowledged that she did not otherwise obtain his agreement in writing.

The landlord sought to introduce evidence concerning the late return of possession and the keys, the tenant's use of the garage in January 2014, and a missing dryer. However, such matters were irrelevant to this case and I did not permit further submissions on these points. As explained to the landlord, the landlord has not made an Application for Dispute Resolution to

seek authorization compensation or to retain the security deposit and the issue to determine is whether the landlord administered the security deposit in accordance with the Act. Accordingly, the relevant facts to determine are whether the tenant provided the landlord with a forwarding address in writing; whether the tenant gave the landlord written authorization to retain the security deposit; and, whether the tenant extinguished his right to return of the security deposit.

### **Cost of emergency repairs (mould)**

The tenant seeks \$525.90 from the landlord for losses associated with mould in the rental unit. This sum is comprised of the cost of cleaning supplies, labour to wash ceilings and walls, and the value of items discarded. The tenant did not provide receipts to establish the cost of cleaning supplies. The tenant did not provide photographs or evidence to establish damage to personal property and the value of the property. As for the labour, the tenant asserted that he and his wife spent 8 hours each cleaning mould from walls and ceilings and seek \$20.00 per hour.

The tenant submitted that mould was discovered in December 2012. The tenant attributed the formation of mould to condensation and excess moisture in the rental unit. The tenant submitted that he called a cleaning company to look at the issue and they suggested a mould remediation company be called. The tenant testified that he called the landlord to the property and the landlord's response was that she was not going to make any repairs as the house was going to be torn down. The tenant claims the landlord essentially told the tenant to live with it or move out. That is when the tenant and his wife proceeded to clean the unit themselves and began running fans and portable heaters.

The landlord responded by acknowledging that she did observe spots of mould in a few areas of the rental unit. The landlord attributed the formation of mould to the tenant not providing sufficient heat to the rental unit. As a result, the landlord told the tenant to turn the heat up and she did not hear anything further about the issue. The landlord submitted that this claim is the first the landlord heard of the tenant wanting to be compensated for cleaning mould and noted that in the past she had paid the tenant for repairs he had made to the property upon request.

### **Analysis**

Upon consideration of everything before me, I provide the following findings and reasons with respect to each of the tenant's claims.

### **Security Deposit**

Unless a landlord has a legal right to retain the security deposit, section 38(1) of the Act provides that a landlord must either return the security deposit to the tenant or make an Application for Dispute Resolution to claim against it within 15 days from the day the tenancy ended or the date the landlord received the tenant's forwarding address in writing, whichever

day is later. Where a landlord does not comply with section 38(1) of the Act, section 38(6) requires that the landlord must pay the tenant double the security deposit.

In this case, I was not provided any information to suggest the tenant extinguished his right to return of the security deposit. I find the disputed oral evidence before me does not satisfy me that the landlord had the tenant's authorization to make deductions from the security deposit in writing. Nor did the landlord have authorization from an Arbitrator to made deductions from the tenant's security deposit. Therefore, I find the landlord did not have a legal right to retain the security deposit.

I find the tenant's testimony and registered mail receipt satisfy me that a forwarding address was provided to the landlord in writing in January 2014 even if the landlord could not recall this event during the hearing.

Since the landlord did not have the legal right to retain the security deposit and was provided a forwarding address in writing after the tenancy ended, I find the landlord was obligated to either refund the security deposit to the tenant or file an Application for Dispute Resolution within 15 days of receiving the forwarding address in order to comply with section 38(1) of the Act. Since the landlord did not I find the tenant entitled to return of double the security deposit under section 38(6) of the Act. The tenant is further entitled to interest on the original amount of the security deposit from October 1, 2005, which is \$15.05 as the tenant calculated.

In light of the above, I grant the tenants request for \$865.05 for double security deposit and interest.

### **Compensation for emergency repairs (mould)**

Although the tenant characterized cleaning of mould was an emergency repair; mould on walls and a ceiling does not meet the definition of "emergency repair" as provided under section 33 of the Act. Rather, a leaking pipe or roof that the tenant urgently repairs because the landlord does not respond to requests for repairs is an example of an emergency repair. In any event, I have considered whether the tenant is entitled to compensation under sections 7 and 67 of the Act which apply where one party has breached the Act, regulations or tenancy agreement.

A party that makes an application for monetary compensation against another party has the burden to prove their claim. Awards for compensation are provided in section 7 and 67 of the Act. Accordingly, an applicant must prove the following:

1. That the other party violated the Act, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. Verification of the value of the loss; and,

4. That the party making the application did whatever was reasonable to minimize the damage or loss.

The burden of proof is based on the balance of probabilities. However, it is important to note that where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

In the absence of receipts I find the tenant failed to verify the cost of cleaning supplies. In the absence of photographs and other evidence to establish the value of personal property that was alleged damaged by mould and disposed of I find the tenant failed to establish the loss. Therefore, I dismiss these portions of the claim without further consideration.

As to the time spent cleaning mould, based upon the submissions of both parties, I find the cause of the mould was not clear. While the tenant stated there was excess moisture and condensation in the rental unit the reason for the excess moisture was not sufficiently established. Excess moisture can be the result of many different things: including leaking pipes, walls, or roof which the landlord is responsible to repair; however, it may also result where a tenant does not adequately heat a rental unit and ventilate moist air that is introduced by normal daily activities such as showering, cooking and breathing.

I accept the landlord's explanation that failure to provide sufficient heat is equally probable as the tenant's reason. Since the tenant has the burden of proof, in the absence of other proof, I find I am unsatisfied that mould was the result of the landlord's failure to repair the residential property.

Of further consideration is that where a tenant is in need of repairs and the landlord will not make the repair the tenant's remedy is to file an Application for Dispute Resolution to seek orders for repairs and/or compliance. The tenant did not do this, the cause of the mould was not further investigated, and the tenant chose to clean the mould instead without further complaint.

### **Filing fee and Monetary Order**

Since the tenant's application had merit with respect to the security deposit, I award the tenant recovery of the \$50.00 filing fee.

In light of the above findings, the tenant is provided a Monetary Order in the amount of \$915.05 [\$865.05 + \$50.00] to serve and enforce upon the landlord.

### **Conclusion**

The tenant was partially successful in this application and the tenant has been provided a Monetary Order in the amount of \$915.05 to serve and enforce upon the landlord.

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 11, 2016

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Residential Tenancy Branch