



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes                      MNDC, MNSD, FF, O

### Introduction

On May 4, 2016, the Tenant applied for dispute resolution seeking money owed or compensation for damage or loss under the *Residential Tenancy Act* (“the Act”), regulation, or tenancy agreement; for the return of a security deposit; and to recover the cost of the Application.

The matter was set as a teleconference hearing. Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained. The evidence was reviewed and confirmed received by each party. The parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to present affirmed oral testimony and to make submissions during the hearing.

I have reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Issues to be Decided

- Is the Tenant entitled to compensation for damage or loss under the Act, regulation or tenancy agreement?
- Is the Tenant entitled to the return of the security deposit?
- Is the Tenant entitled to recover the cost of the Application?

### Background and Evidence

The Landlord and Tenant testified that the tenancy began on November 1, 2015, as a six month fixed term that continued thereafter as a month to month tenancy. Rent in the amount of \$560.00 was due on the first day of each month. A security deposit of \$280.00 was paid by the Tenant to the Landlord. The Tenant was to pay the Landlord 40% of all shared utilities costs. The Tenant testified that she moved out on April 30, 2016.

The Tenant testified that she became concerned regarding a number of tenancy issues. She testified that there was illegal entry into her rental unit; problems with the heating of the rental unit; noise from the Landlord; and the Landlord failed to return the security deposit. The Tenant's Application indicates the Tenant is seeking a monetary order in the amount of \$2,340.35.

The Tenant provided a monetary order breakdown of her claim as follows:

Rent for the month on November due to lack of primary heating	\$560.00
Rent for the month of March and April because the Tenant did not use the unit due to increased fear of safety and discomfort	\$1,120.00
Utilities, as the Tenant spent less than 7 days in the unit each month due to breaches of safety and quiet enjoyment.	\$314.00
Security deposit, the Landlord withheld part of the deposit without consent.	\$220.00
Storage fee: the Tenant moved belongings into storage while seeking a place for self.	\$213.35
Total	\$2,427.35

At the end of the hearing the Tenant stated that she would like to amend her claim. The Tenant stated that she is dropping her monetary claim for the following items:

Rent for the month on November due to lack of primary heating	\$560.00
Rent for the month of March and April because the Tenant did not use the unit due to increased fear of safety and discomfort	\$1,120.00
Storage fee: the Tenant moved belongings into storage while seeking a place for self.	\$213.35

### Loss of Quiet Enjoyment

The Tenant testified that the Landlord entered the rental unit improperly a minimum of four times. The Tenant submitted that in November the Landlord entered her unit to place her mail on the counter. The Tenant submitted that she told the Landlord that his entry into the unit made her uncomfortable and asked that her mail be put in the mail slot instead. The Tenant submitted that there was another incident when she was sleeping in her room when the Landlord knocked and called out "hello" and entered into the hallway of the rental unit. She submitted that there was no apparent reason for the Landlord's entry and she asked the Landlord to leave. She submitted that the Landlord asked her about her hours of work but did not give her a reason for his entry into the unit. The Tenant submitted that on another occasion she was in the shower with her boyfriend when the Landlord entered into the hallway of the rental unit again. She submitted that the Landlord called out and she asked him to get out. She submitted that the Landlord provided no reason for the entry. She submitted that she spoke to the Landlord about his entry and asked him to change the locks to restrict his accessibility. The

Tenant submitted that the Landlord entered a fourth time when she was awoken from her sleep by the door opening from the connecting unit. She submitted that she yelled for the Landlord to leave immediately and the Landlord responded by stating that he wanted to talk about heating issues. The Tenant testified that the Landlord could have used the phone to contact her or to determine if she was home. The Tenant submitted that she told the Landlord any further entry into her unit would be reported to the police. The Tenant is seeking compensation in the amount of \$314.00 as she states that spent less than 7 days in the unit each month due to breaches of safety and quiet enjoyment.

The Tenant testified that she was bothered by noise from the Landlord which was an infringement of her right to quiet enjoyment of the rental unit. She testified that the Landlord is hard of hearing. She testified that there were loud noises and hammering. She testified that the noise from the Landlord's television was the most bothersome. The Tenant stated that she knocked on the Landlord's door and asked the Landlord to turn the volume of the television down. The Tenant testified that she mentioned the noise to the Landlord on a couple of occasions. The Tenant testified that the Landlord's own evidence supports her testimony that she complained about the volume of the Landlord's television. The Tenant submits that the Landlord's evidence of a reference from the current Tenant also supports her testimony that the Landlord's tv or music can be heard in the rental suite.

The Tenant produced a witness M.B. who testified that he witnesses two occasions where the Landlord entered without knocking and the Tenant asked the Landlord to leave. M.B. testified that the Landlord called out "is anybody here" on one occasion.

In response, the Landlord testified that he is 89 years old with hearing issues. He testified that the Tenant did not have a mailbox so he dropped mail in her door. The Landlord stated that he never went into her suite again to put mail in her unit. The Landlord testified that he entered the Tenant's suite and called her name because of the heat issue. He testified that he wanted to set a date for the electrician to come. The Landlord submitted that after the electrical problems had been resolved he never entered her suite again. The Landlord stated that he is sorry and he should not have entered. The Landlord stated that he knocked and entered two or three times and after she complained he never did it again. The Landlord stated that he changed the lock upon the Tenants request.

The Landlord submitted that after the Tenant complained about the music from his television he turned it down and the Tenant did not complain again. The Landlord testified that he had a quiet place and he was concerned about waking the Tenant up. The Landlord submitted that at no time was there hammering in his living room or yelling or shouting and that the Tenant did not complain about any such noises.

#### Security Deposit

The Tenant testified that she did not agree that the Landlord could keep any amount of the security deposit at the end of the tenancy. The Tenant testified that she picked up a cheque from the Landlord, and the Landlord had deducted an amount for hydro and refunded the remainder. The Tenant could not recall whether she provided the Landlord with a written letter providing her forwarding address at the end of the tenancy. The Tenant is seeking \$220.00.

The Landlord testified that he gave the Tenant a breakdown of costs for the utilities and returned the deposit less the cost for hydro for March and April. The Landlord testified that he paid the Tenant \$60.00.

### Analysis

Section 7 of the Act states that if a Landlord or Tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying Landlord or Tenant must compensate the other for damage or loss that results. A Landlord or Tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Section 38 (1) of the Act states 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 any security deposit or pet damage deposit to the Tenant with interest calculated in accordance with the regulations, or make an application for dispute resolution claiming against the security deposit or pet damage deposit.

Section 28 of the Act states a Tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:

- (a) Reasonable privacy;
- (b) Freedom from unreasonable disturbance;
- (c) Exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29 [landlord's right to enter rental unit restricted];
- (d) Use of common areas for reasonable and lawful purposes, free from significant interference.

Section 29 states a Landlord must not enter a rental unit that is subject to a tenancy agreement for any purpose unless one of the following applies:

- (a) The tenant gives permission at the time of the entry or not more than 30 days before the entry;
- (b) At least 24 hours and not more than 30 days before the entry, the landlord gives the tenant written notice that includes the following information:
  - (i) The purpose for entering, which must be reasonable;
  - (ii) The date and the time of the entry, which must be between 8 a.m. and 9 p.m. unless the tenant otherwise agrees;

- (c) The landlord provides housekeeping or related services under the terms of a written tenancy agreement and the entry is for that purpose and in accordance with those terms;
- (d) The landlord has an order of the director authorizing the entry;
- (e) The tenant has abandoned the rental unit;
- (f) An emergency exists and the entry is necessary to protect life or property.

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

With regard to the security deposit, I find that the Landlord did not have the Tenant's permission to withhold any amount of the security deposit. The Landlord is required by section 38 of the Act to return it to the Tenant, or make an application for dispute resolution to claim against it within 15 days of the end of the tenancy. There is no evidence before me that the Landlord applied for dispute resolution to keep the security deposit. I find that the Tenant did not provide the Landlord with a forwarding address in writing. Since the Tenant did not provide a forwarding address, I find that the doubling of the security deposit provisions of the Act do not apply. I order the Landlord to pay the Tenant the amount of \$220.00 which the Landlord withheld from the security deposit.

With respect to the Tenants claim regarding a loss of quiet enjoyment, I find that the Landlord entered the Tenant's rental unit without authorization on four occasions. I accept the Tenant's testimony that the Landlord entered the rental unit after the Tenant asked him not to do so. I find that the Landlord's entry was not due to an emergency situation to protect life or property. I also accept the Tenant's testimony that noise coming from the Landlord's television disturbed her. The Landlord's evidence corroborates the Tenant's testimony. I find that the Landlord's entry into the Tenant's rental unit, and the noise from the Landlord disturbed the Tenant and amounts to a breach of the Tenant's right to quiet enjoyment, and reasonable privacy, under section 28 of the Act.

Based on above, I find that pursuant to section 7 of the Act, the Landlord must compensate the Tenant for the breach of section 28 of the Act regarding the loss of quiet enjoyment that the Tenant suffered. Based on the Tenant's submission that she spent less time in the rental property due to her concerns, I find it reasonable that the value of the tenancy was reduced by the amount of her claim. I award the Tenant the amount of \$314.00.

Section 72 of the *Act* gives me authority to order the repayment of a fee for an application for dispute resolution. As the Tenant was successful in her application, I order the Landlord to repay the \$100.00 fee that the Tenant paid to make application for dispute resolution.

In total, I award the Tenant a monetary order in the amount of \$634.00. This amount is comprised of the \$220.00 for the security deposit; \$314.00 for loss of quiet enjoyment; and \$100.00 for the recovery of the \$100.00 filing fee. This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that court. The Landlord is cautioned that costs of such enforcement are recoverable from the Landlord.

Conclusion

The Landlord retained the security deposit in breach of the provisions of the Act. The Landlord also breached the Tenant's right to quiet enjoyment. The Tenant is awarded \$220.00 for the return of the remainder of the security deposit and is awarded \$314.00 for the loss of quiet enjoyment. I grant the Tenant a monetary order in the amount of \$634.00.

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 27, 2016

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Residential Tenancy Branch