



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDC MNSD RR FF

### Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* ("the Act") for: a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67; authorization to obtain a return of all or a portion of her security deposit pursuant to section 38; a rent reduction for repairs, services or facilities agreed upon but not provided pursuant to section 65; and 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. The tenant provided proof of service of her Application for Dispute Resolution package and the landlord confirmed receipt of same. The tenant and landlord both confirmed receipt of the other's evidentiary submissions for this hearing.

### Issue(s) to be Decided

Is the tenant entitled to a monetary order for compensation for loss, including any rent reduction for repairs and facilities agreed upon but not provided?

Is the tenant entitled to the return of all or a portion of her security deposit?

Is the tenant entitled to recover the filing fee for this application from the landlord?

### Background and Evidence

This tenancy began on August 1, 2016 as a month to month tenancy with a monthly rental amount of \$1100.00 payable on the first of each month. The tenant gave notice to end the tenancy on December 31, 2016. At that time, the tenant also provided her

forwarding address. The tenant vacated the rental unit on January 31, 2017, providing the keys to the rental unit to the landlord's agent on that date.

The landlord continues to retain a portion of the tenant's security deposit. The tenant testified she paid a \$550.00 security deposit while the landlord testified that the security deposit paid by the tenant was \$300.00 only. The landlord referred to her banking information submitted for this hearing showing the monthly rental payments from the tenant as well as a \$300.00 security deposit amount after the start of the tenancy (August 22, 2016). The tenant testified that she paid an additional \$250.00 to the landlord's agent (also landlord's mother) on October 7, 2017.

With respect to the payment of the security deposit, the landlord referred to text message correspondence between the parties near the outset of the tenancy (August 19, 2016) and on October 8, 2017. The text messages read, in part, as follows,

*Landlord: can you let me know when you will be paying the damage deposit? (August 19, 2016)*

*...*

*Tenant:... I'll put \$300.00 in your account... (August 19, 2016)*

*Landlord: ...just wondering when [your] gonna pay the rest of the damage deposit? (October 8, 2016)*

*...*

*Tenant: ...I'd love to pay it when the rest of all the stuff we moved into is done (October 8, 2016)*

The landlord testified that, at the end of the tenancy, on or about February 10, 2017, she returned \$150.00 to the tenant to reflect 50% of the security deposit paid (\$300.00). In an attached letter, she relied on the fact that she had to do extensive cleaning of the rental unit at a cost of \$400.00. The tenant testified that she received but did not cash the cheque sent by the landlord. The landlord testified that she did not apply to the Residential Tenancy Branch to retain a portion of the tenant's security deposit because she did not know that she was required to do so. The landlord testified that she now realizes her error and that the entirety of the tenant's security deposit paid (\$300.00) should be returned to the tenant.

As well as the return of her security deposit, the tenant sought \$150.00 per month for the entirety of her tenancy (6 months) for a total of \$900.00. The tenant sought to recover this amount for two reasons. First, the tenant testified (referring to the text correspondence between the two parties) that the landlord had initially quoted a monthly

rental amount of \$950.00 but that the tenant ultimately paid \$1100.00 in monthly rent. The residential tenancy agreement submitted for this hearing reflected an agreement between the parties to an \$1100.00 rental amount. The tenant testified that the landlord increased the amount of the rent because she asked for a dishwasher however the landlord indicated (reflected in her text correspondence with the tenant) that she told the tenant she had decided to keep the advertised rental amount of \$1100.00. The landlord's messages show that she did not oblige the tenant to take the rental unit at \$1100.00 per month and she told the tenant that she had other interested parties.

The tenant argues that the landlord reneged on her promise of a new dishwasher and, as that dishwasher was never provided, the rental amount should revert to the original agreement. The tenant pointed to a text from the landlord following the tenant's agreement to rent the unit at \$1100.00. The message indicated that the landlord would purchase a replacement dishwasher for the unit. However, the landlord testified that she discovered the dishwasher within the rental unit was functioning and that it did not need to be replaced.

The tenant sought an additional \$500.00 for the work she did within the rental unit. She testified that there was a freezer in the rental unit that she emptied and cleaned. She testified that, each time the landlord sent a contractor to make a repair, she cleaned up after that contractor. She testified that one contractor left a particularly substantial mess in the rental unit. The tenant testified that, as repairs and renovations were conducted on the unit, she (and her co-tenant/husband) would often drive to pick up items required for the renovations/repairs, including a new toilet on one occasion. The tenant argued that she should be compensated for her time and expense. The landlord responded that there was no agreement to compensate the tenants. She testified that the tenants had requested repairs and renovations, some of them cosmetic in nature. She testified that she paid for materials and that both parties had mutually agreed to work to improve the condition of the rental unit. She referenced the invoices she submitted for renovation work during the course of this tenancy totalling approximately \$7000.00.

The tenant also sought to recover her filing fee. The landlord did not dispute this claim. The landlord identified her error in failing to make an application to retain the tenant's security deposit and, for that reason the landlord stated that she believed it was right that the tenant be compensated for her filing cost.

## Analysis

When a landlord and tenant enter into a tenancy agreement, written or verbal, each is expected to meet their responsibilities under the *Act*; a tenant is expected to pay rent; a landlord is expected to provide the premises as agreed to. If a tenant is deprived of the use of all or part of the premises, the tenant may be entitled to damages. In most circumstances, when assessing a claim for damage, Section 67 of the *Act* applies: If damage or loss results from a tenancy, an arbitrator may determine the amount of that damage or loss and order payment to the other party.

Section 67 of the *Act* establishes that, in order to claim for damage or loss under the *Act*, the party claiming the damage or loss (in this case, the tenant) bears the burden of proof. The tenant must prove the existence of the damage/loss. I find that the tenant has proven a general loss of use of the residence on occasion due to the renovations and repairs. Based on the testimony at this hearing and the evidentiary submissions, I find that 50% of the repairs done at the unit were repairs required for the unit to be safe and livable. I accept the testimony of the tenant that the tenant, her husband and her child were unable to use the entire residence at all times in the manner they would have expected to but for the ongoing repairs.

In seeking a monetary award, the claimant (the tenant in this matter) must generally provide evidence that can verify the actual monetary amount of the loss/damage. However, the types of damages an arbitrator may award are; expenditures proved at the hearing in accordance with section 67 of the *Act* as outlined above; an amount reflecting a general loss where it is not possible to place an actual value on the loss; “nominal damages” where there has been no significant loss or no significant loss has been proven, but they are an affirmation that there has been an infraction of a legal right; and finally aggravated damages for significant infractions by the landlord to the tenant.

I find that the tenant has proven damage/loss but that the loss was not necessarily a result of a contravention of the *Act* by the landlord. The landlord did not dispute that some of the repairs requested by the tenant were necessary. She was diligent in addressing the requests made by the tenant and provided contractors and materials as required. In some circumstances, a landlord may be required to compensate the tenant for loss of use or another type of loss even if the landlord has not acted in contravention of the *Act* or tenancy agreement. In this case, I find that the tenant is entitled to an amount reflecting a general loss of use by the tenant where it is not possible to place an

actual value on her loss and where the landlord is not negligent or in contravention of the Act.

I note that the landlord was in a difficult position where she attempted to meet the repair and renovation requests of her tenant as well as ensure that she was able to meet her own financial obligations. However, given the substantial amount of repairs that were required after the start of this tenancy and given the loss attributable to those ongoing repairs, I find that the tenant is entitled to some compensation by way of a monthly rent reduction for the time she resided in the rental unit. Given that the tenant continued to have her primary amenities and access to her residence, I find that the tenant is entitled to a monthly rent reduction of \$50.00 over the course of 6 months or \$300.00. I note that other factors included the landlord's failure to replace the dishwasher as promised, the reduced use of bathroom facilities and other features of the home for brief periods of time.

With respect to the tenant's claim for \$500.00 for her time and toil in assisting with renovations around the rental unit while repairs and renovations took place, I find that the tenant undertook much of this work of her own accord and without the prior consultation and approval of the landlord. I find that some of the work was cosmetic but that the tenant's efforts improved the value of the home for the landlord. I find that a nominal amount to represent her efforts in improving the rental unit and facilitating the work by contractors on behalf of the landlord is appropriate. I find the tenant is entitled to \$150.00 for the cost of transport of items for the home, clean-up and other renovation related tasks.

Given the conflicting testimony regarding the amount of the security deposit paid, an initial determination regarding this service hinges on a determination of credibility. I found that, despite the landlord's errors in failing to know all of her obligations under the Act, the landlord was generally very candid in her testimony. In addition to her candid admissions, I have considered the content of the testimony provided, whether it is consistent with the other events that took place during this tenancy and whether it is supported by the documentary evidence submitted by each party. I note that, within the text message correspondence, the landlord made more than 2 inquiries about payment of the security deposit and more than 2 inquiries regarding payment of the outstanding portion of the security deposit. With respect to the amount of tenant's security deposit paid, I accept the testimony of the landlord that the tenant paid \$300.00. I find that the tenant provided insufficient evidence to support her claim that she paid the remaining \$250.00 to the landlord or a landlord's representative in security deposit at a later date.

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 deposits, 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, again candid in her admission that she was informed of the forwarding address by December 31, 2016. The landlord had 15 days after December 31, 2016 to take one of the actions outlined above.

Section 38(4)(a) of the *Act* also allows a landlord to retain an amount from a security deposit if "at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant." The tenant and landlord both testified that the tenant did not agree to the retention of any portion of her security deposit. Therefore, section 38(4)(a) of the *Act* does not apply to the tenant's security or pet damage deposit.

The tenant sought the return of her security deposit. I have made a determination that the tenant paid \$300.00 in security deposit. The landlord did not apply to the Residential Tenancy Branch to retain the tenant's deposit. Given these findings, the tenant is entitled to a monetary order including \$300.00 for the return of the amount of her security deposit.

The following provisions of Policy Guideline 17 of the Residential Tenancy Branch's Policy Guidelines would seem to be of relevance to the consideration of this application:

*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;*
- *If the landlord has claimed against the deposit for damage to the rental unit and the landlord's right to make such a claim has been extinguished under the Act;*

- *If the landlord has filed a claim against the deposit that is found to be frivolous or an abuse of the arbitration process;*
- *If the landlord has obtained the tenant's written agreement to deduct from the security deposit for damage to the rental unit after the landlord's right to obtain such agreement has been extinguished under the Act;*
- *whether or not the landlord may have a valid monetary claim.*

Based on the undisputed evidence before me, I find that the landlord has neither applied for dispute resolution nor returned the tenant's security deposit in full within the required 15 days. The tenant did not waive her right to obtain a payment pursuant to section 38 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 her security deposit (\$600.00) with any interest calculated on the original amount only. No interest is payable for this period.

As the tenant was partly successful in her application and the landlord conceded the reasonableness of compensation for the filing fee, I find that the tenant is also entitled to recover the \$100.00 filing fee for this application.

| <b>Item</b>  | <b>Amount</b>    |
|--|------------------|
| Lack of use of the rental unit and other inconveniences during tenancy         | \$300.00         |
| Costs associated with clean-up and pick-ups related to renovations and repairs | 150.00           |
| Return of Security Deposit   | 300.00           |
| Monetary Award for Landlords' Failure to Comply with s. 38 of the <i>Act</i>   | 300.00           |
| Recovery of Filing Fee for this Application                                    | 100.00           |
| <b>Total Monetary Order</b>  | <b>\$1150.00</b> |

### Conclusion

I order the tenant to return the \$150.00 cheque sent to the tenant by the landlord prior to this hearing. The tenant will return the \$150.00 cheque by registered mail.

I grant the tenant a monetary order in the amount of \$1150.00.

The tenant is provided with this Order in the above terms and 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.

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: July 28, 2017

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Residential Tenancy Branch