



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNR, MNDC, MNSD

### Introduction

This hearing was convened in response to an application by the Tenant pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. A Monetary Order for emergency repairs - Section 67;
2. A Monetary Order for compensation - Section 67;
3. An Order for the return of the security deposit - Section 38; and
4. An Order to recover the filing fee for this application - Section 72.

The Landlord did not attend the hearing. I accept the Tenant’s evidence that the Landlord was served with the application for dispute resolution and notice of hearing (the “Materials”) by registered mail in accordance with Section 89 of the Act. The Tenant provided the registered mail receipt.

Section 90 of the Act provides that a document served in accordance with section 89 of the Act is deemed to be received if given or served by mail, on the 5th day after it is mailed. Given the evidence of registered mail I find that the Landlord is deemed to have received the Materials. The Tenant was given full opportunity to be heard, to present evidence and to make submissions.

### Issue(s) to be Decided

Is the Tenant entitled to the monetary amounts claimed?

### Background and Evidence

The Tenant found the unit advertised for either sale or rent with an online realty company. The advertisements included photos of a suitable unit. The Tenant knew the Landlord and after contacting the Landlord in mid-January 2017 the Parties agreed that the unit would be rented for \$800.00 monthly. At this point the Tenant paid the Landlord a security deposit of \$400.00 and partial rent for February 2017 of \$400.00. The Landlord agreed that the Tenant could move her belongings in early.

On January 26, 2017 the Tenant's movers arrived at the unit and unloaded the Tenant's belongings in the house. The Tenant followed up later with her vehicle. Upon attending the unit the Tenant found that the water was not running and there was no heat. The Tenant also noted several other problems with the unit including holes in the unit and exposed wiring. On January 26, 2017 the Tenant had also purchased food and placed it in the fridge and freezer of the rental unit.

The Tenant contacted the Landlord who assured her that he would make repairs to the unit prior to February 1, 2017. The Landlord told the Tenant to contact the gas company to get the connection to heat. When this company arrived it informed the Tenant that there were problems with the furnace and that repairs were required. The gas company charged the Tenant \$72.37. The Landlord told the Tenant to hire a specific company found online to make the repairs to the furnace and to hire a specific person to turn on the water. The Tenant paid \$262.50 for the furnace repairs and \$20.00 for the water hook up.

On January 30, 2017 the Landlord informed the Tenant that the repairs to the unit could not be made. The Tenant also discovered that the fridge had stopped working and the food had spoiled. The Parties agreed that the unit was not liveable and the Landlord agreed to repay the rent and security deposit. The Landlord asked the Tenant to leave the keys to the unit at the unit. The Tenant understands that the Landlord's girlfriend was then to move into the unit. The Tenant's costs to move to another unit were paid

by the realty company who had advertised the unit. The Tenant claims \$400.00 as return of the rent paid, the costs of the repairs for the heat and water in the amounts of \$262.50, \$72.37 and \$20.00, and \$200.00 for the costs of the food in the fridge and freezer that spoiled. The Tenant provided receipts.

The Tenant sent her forwarding address to the Landlord on February 6, 2017 by mail and the Landlord has neither returned the security deposit nor made an application to claim against the security deposit. The Tenant claims return of the security deposit and does not waive any entitlement to return of double the security deposit.

The Tenant clarifies that the amount of \$800.00 included in the monetary order worksheet was set down in error and the Tenant withdraws that claim.

#### Analysis

Section 32(1) of the Act provides that a landlord must provide and maintain residential property in a state of decoration and repair that

- (a) complies with the health, safety and housing standards required by law, and
- (b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

Section 7 of the Act provides that where a landlord does not comply with the Act, regulation or tenancy agreement, the landlord must compensate the tenant for damage or loss that results. Based on the undisputed evidence of the Tenant I find that the Landlord failed to provide a rental unit suitable for occupation by the Tenant and that the Tenant is therefore entitled to return of the rent paid for that unit in the amount of **\$400.00**. Based on the undisputed evidence that the Landlord requested that the Tenant obtain repairs to the furnace and water and as these are items that should have been operational for the Tenant without cost I find that the Tenant has substantiated an entitlement to the costs claimed of **\$262.50 + 72.37 + 20.00**. Based on the undisputed

evidence that the Landlord failed to provide a working fridge and given the undisputed evidence of the loss of food I find that the Tenant is entitled to **\$200.00** for this loss.

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 undisputed evidence of the Tenant I find that the Tenant provided her forwarding address and that the Landlord failed to return the security deposit and did not make any application to claim against the security deposit. The Tenant is therefore entitled to return of double the security deposit plus zero interest of **\$800.00** for a total entitlement of **\$1,754.87**.

#### Conclusion

I grant the Tenant an order under Section 67 of the Act for **\$1,754.87**. 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: August 24, 2017

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Residential Tenancy Branch