



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes MNRL-S, MNDCL-S, FFL; MNDCT, MNSD, RPP

### Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* ("Act") for:

- a monetary order for unpaid rent and for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("Regulation") or tenancy agreement, pursuant to section 67;
- authorization to retain the tenant's security deposit, pursuant to section 38; and
- authorization to recover the filing fee for his application, pursuant to section 72.

This hearing also dealt with the tenant's cross-application pursuant to 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 double the amount of the security deposit, pursuant to section 38; and
- an order requiring the landlord to return the tenant's personal property, pursuant to section 65.

The landlord, the tenant and the tenant's advocate attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. "Witness BC" testified on behalf of the tenant and both parties had equal opportunities to question the witness. This hearing lasted approximately 84 minutes in order to allow both parties to fully present their submissions.

Both parties confirmed receipt of the other party's application for dispute resolution hearing package. In accordance with sections 89 and 90 of the *Act*, I find that both parties were duly served with the other party's application.

### Issues to be Decided

Is the landlord entitled to a monetary order for unpaid rent?

Is the landlord entitled to retain the tenant's security deposit?

Is the landlord entitled to recover the filing fee for his application?

Is either party entitled to a monetary order for compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement?

Is the tenant entitled to a return of double the amount of his security deposit?

Is the tenant entitled to an order requiring the landlord to return the tenant's personal property?

### Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties and witness BC, not all details of the respective submissions and arguments are reproduced here. The principal aspects of both parties' claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on January 10, 2017. Monthly rent in the amount of \$900.00 was payable on the first day of each month. A move-in condition inspection report was completed but a move-out condition inspection report was not completed for this tenancy. The tenant did not give the landlord written permission to keep any amount from the security deposit. The tenant provided a forwarding address by way of his application for dispute resolution, which the tenant said was filed on April 18, 2018 and the landlord said was filed on April 17, 2018. The landlord filed his application to retain the deposit on May 1, 2018.

The tenant said that he paid a security deposit of \$900.00 to the landlord, while the landlord indicated that it was \$650.00. Both parties agreed that the landlord returned \$450.00 from the deposit to the tenant. The tenant claimed that he was locked out of the rental unit on October 5, 2017, while the landlord said that it was October 10, 2017.

The landlord seeks unpaid rent of \$900.00 from the tenant for October 2017 and to recover the \$100.00 application filing fee. Both parties agreed that the tenant did not pay rent of \$900.00 to the landlord for that month. The landlord said that he wanted the tenant to leave the unit because he failed to pay rent by October 1, 2017. The landlord claimed that he issued notices in the form of emails and text messages to end the tenant's tenancy but did not use the approved Residential Tenancy Branch ("RTB") forms to do so.

Both parties agreed that they signed a mutual agreement to end tenancy for the tenant to vacate by October 10, 2017 and for \$450.00 from the tenant's deposit to be returned to him and his belongings would be returned to him. The mutual agreement indicates that the tenant forfeits 50% of his deposit, totalling \$450.00, to the landlord. The landlord indicated that \$450.00 was not 50% of the tenant's deposit as this was an error, since the tenant only paid a \$650.00 deposit not a \$900.00 deposit. The landlord claimed that he re-rented the unit to a new tenant as of November 1, 2017.

The tenant said that he was out of town and returned on October 5, 2017 to find that the landlord had locked him out of the rental unit. He said that he did not pay rent on October 1, 2017 because he was out of town at that time and intended to pay it upon his return. The tenant claimed that even though he had possession of the unit from October 1 to 5, 2017, the landlord is not entitled to any rent for that month because he locked the tenant out of the rental unit.

The tenant seeks a return of double the value of \$450.00, totalling \$900.00, since he said that the landlord only returned \$450.00 of his deposit to him. The tenant said that he signed the mutual agreement to end tenancy under duress and coercion and it was unconscionable because he only signed

it in order to get his property back from the landlord. He stated that an agreement to keep his deposit for cleaning and other fees that were not incurred, was not appropriate as per the *Act*. The tenant seeks \$1,100.00 for stress, mental anguish, and for being homeless living in his car for 11 days due to being locked out of the unit by the landlord. He said that he did not submit any medical records for this hearing, to prove the above conditions. He said that based on previous RTB decisions, which he did not submit for the hearing, he was seeking \$100.00 per day for a total of 11 days.

The tenant also seeks a total of \$2,320.00 for various clothing and items that he lost because he said that the landlord put all of his belongings on the front lawn and people stole his items. He said that the landlord called the police to report the theft. He claimed that he also told the police on October 5, 2017 that his items were stolen and he was told to deal with the RTB about the matter. The tenant said that the landlord did not properly attempt to end his tenancy, did not safeguard his items, and prevented the tenant access to the unit to retrieve his belongings. The landlord denied leaving the tenant's items outside on the lawn, stating that a prostitute who had access to the tenant's rental unit and was seeing the tenant, took the items and he has video evidence of it from October 8, 2017, even though he did not submit it. The tenant denied these allegations. The tenant claimed that he did not have receipts for his stolen belongings but he provided printouts of advertisements for the same clothing and items he lost, for the same price or cheaper than what he paid.

Witness BC testified that she replied to the landlord's advertisement to rent the tenant's unit on October 9, 2017, after she saw photographs of the unit empty and she was concerned since she thought the tenant was living there. She said that the landlord asked her to call him, that he told her to tell the tenant that his belongings were outside and to get them, and that he did not specifically tell her that he put the items outside but she assumed he put it there.

### Analysis

#### Landlord's Application

I award the landlord \$145.16 for five days of unpaid rent from October 1 to 5, 2017. I find that these are the only days that the tenant had possession and use of the rental unit, even though he was out of town during this time. I find that the landlord is only entitled to five days of rent rather than the whole month because he illegally locked the tenant out of the rental unit for failing to pay rent. I find that the tenant did not have possession of or access to the rental unit from October 6 to 31, 2017. I also find that the landlord failed to show his efforts to re-rent the unit because he did not provide advertisements for the unit, documentation regarding how many showings, and proof of when he re-rented the unit.

I order the landlord to retain \$145.16 from the tenant's security deposit in full satisfaction of the monetary award for unpaid rent.

As the landlord was only partially successful in his application, I decline to award the \$100.00 filing fee to him.

#### Tenant's Application

Section 38 of the *Act* requires the landlord to either return the tenant's security deposit or file for dispute resolution for authorization to retain the deposit, within 15 days after the later of the end of a tenancy and

the tenant's provision of a forwarding address in writing. If that does not occur, the landlord is required to pay a monetary award, pursuant to section 38(6)(b) of the *Act*, equivalent to double the value of the security deposit. However, this provision does not apply if the landlord has obtained the tenant's written authorization to retain all or a portion of the security deposit to offset damages or losses arising out of the tenancy (section 38(4)(a)) or an amount that the Director has previously ordered the tenant to pay to the landlord, which remains unpaid at the end of the tenancy (section 38(3)(b)).

The landlord did not return the full security deposit to the tenant. I find that the tenant did not provide written permission by way of the mutual agreement to end tenancy, for the landlord to retain \$450.00 from his deposit. The agreement indicates that the tenant allowed the landlord to keep \$450.00 from his deposit in exchange for getting his personal belongings back from the rental unit, since the landlord had locked him out. I find that this term is inconsistent with the *Act*, as per section 6(3)(a), because it is similar to the provision of section 20(e) of the *Act* which states that the landlord cannot include as a term of a tenancy agreement that he can keep the deposit at the end of the tenancy. The landlord is attempting to do just this, by way of his mutual agreement to end tenancy, rather than the tenancy agreement. He was holding the tenant's personal belongings illegally in exchange for keeping \$450.00 from the tenant's security deposit at the end of the tenancy. This is in contravention of the meaning and purpose of the security deposit provisions in the *Act*.

The landlord made an application for dispute resolution to claim against the security deposit on May 1, 2018, within 15 days of the written forwarding address being provided by way of the tenant's application, which the landlord stated was on April 17, 2018. Although the landlord's right to claim against the deposit for damages was extinguished for failure to complete a move-out condition inspection report, the landlord filed for unpaid rent for October 2017, not damages. Therefore, I find that the tenant is not entitled to double the value of his deposit.

However, I find that the tenant paid a \$900.00 security deposit to the landlord, not \$650.00 as claimed by the landlord. The landlord's own document, a mutual agreement to end tenancy, was drafted by him and indicated that 50% of the deposit was \$450.00, which would mean that the tenant actually paid \$900.00 total to the landlord. Although the landlord claimed this was an error, I accept the tenant's evidence that he actually paid \$900.00 to the landlord. Therefore, I find that the tenant is entitled to the return of the remainder of his deposit of \$450.00, which the landlord continues to hold, since \$450.00 was already provided to the tenant at the end of the tenancy. Over the period of this tenancy, no interest is payable on the deposit.

Section 67 of the *Act* states that when a party makes a claim for damage or loss, the burden of proof lies with the applicant to establish the claim. To prove a loss, the tenant must satisfy the following four elements on a balance of probabilities:

1. Proof that the damage or loss exists;
2. Proof that the damage or loss occurred due to the actions or neglect of the landlord in violation of the *Act*, *Regulation* or tenancy agreement;
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
4. Proof that the tenant followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

Residential Tenancy Policy Guideline 16 states the following with respect to types of damages that may be awarded to parties:

*An arbitrator may only award damages as permitted by the Legislation or the Common Law. An arbitrator can award a sum for out of pocket expenditures if proved at the hearing and for the value of a general loss where it is not possible to place an actual value on the loss or injury. An arbitrator may also award "nominal damages", which are a minimal award. These damages may be awarded 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.*

Section 28 of the *Act* deals with the tenant's right to quiet enjoyment:

**28** *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.*

I find that the tenant is entitled to \$300.00 in nominal damages from the landlord for a loss of quiet enjoyment and loss of personal belongings. Although the tenant was unable to properly substantiate the amount of \$2,320.00 for lost items, I find that the tenant's legal rights under sections 28, 29 and 30 of the *Act* and sections 24 and 25 of the *Regulation* were violated. I find that the tenant provided sufficient evidence that the landlord entered his rental unit without notice and permission, that the tenant was locked out of the unit without the landlord providing legal notices to end tenancy on the approved RTB forms as required, that the tenant was denied access to the rental unit, that the tenant became homeless, and the tenant was then asked to sign a mutual agreement to relinquish part of his deposit in order to get his items back. Since the landlord had access to the tenant's unit and he reported the tenant's items as stolen, I find that the landlord had control of the tenant's possessions as of October 6, 2017 until the tenant retrieved some of his items after signing the mutual agreement to end tenancy. I find that the tenant was unable to prove the exact cost of his lost items but I find that he did suffer the above losses due to the landlord's illegal actions of denying the tenant access and failing to safeguard the tenant's items.

Since some of the tenant's items were stolen, the landlord does not have the items, and the tenant retrieved the rest of his items, I dismiss the tenant's application for the landlord to return his personal property, as I have awarded compensation to the tenant in lieu, as noted above.

### Conclusion

I issue a monetary order in the tenant's favour in the amount of \$604.84 against the landlord. The tenant's total monetary award of \$750.00 has been reduced by \$145.16 for the landlord's monetary award for unpaid rent. 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.

The landlord's application to retain the tenant's security deposit and to recover the \$100.00 application filing fee is dismissed without leave to reapply.

The tenant's application for an order requiring the landlord to return the tenant's personal property is dismissed without leave to reapply.

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 28, 2018

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Residential Tenancy Branch