



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNR LRE MNDCT

### Introduction

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

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (10 Day Notice) pursuant to section 46 of the *Act*;
- an order suspending or restricting the landlord's right to enter the rental unit pursuant to section 70 of the *Act*; and
- a monetary order for damage or compensation pursuant to section 67 of the *Act*.

Both parties attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

### Preliminary Issue – Service of Documents

As both parties were present, service of documents was confirmed. The landlord testified that he received the tenant's application and notice of dispute resolution on or about May 19, 2018, however he stated that he did not receive the tenant's evidentiary materials until June 15, 2018. The landlord further stated that he was unable to serve the tenant with his evidence as the tenant had not provided a forwarding address after he moved out of the rental unit on June 4, 2018. The tenant confirmed that he had not provided the landlord with a written forwarding address as he was not aware that he needed to do so. The landlord testified that he had provided 40 pages of evidence to the Residential Tenancy Branch in support of his testimony disputing the tenant's claims. However, I advised the landlord that only three pages of evidence from the landlord was uploaded to the Residential Tenancy Branch dispute website, and that there was another file number referenced on the evidence the landlord submitted. I

further advised the landlord that it was possible he had submitted the evidence under the other file number, from a previous hearing in which the landlord had made an application against the tenant (I have noted this file number on the cover sheet of this decision). I advised the landlord that he could provide testimony to the evidence contained in his 40-page submission.

Based on the above testimonies of the parties, I find that the landlord was sufficiently served with the notice of the hearing and the tenant's evidence in accordance with section 71(2)(c) of the *Act*.

I have only considered the evidence that was before me and the testimony of the parties.

#### Preliminary Issue – Amendments to the Tenant's Application

At the outset of the hearing, both parties confirmed that the landlord's name was not correctly noted on the tenant's application. With the agreement of both parties, and pursuant to my authority under section 64(3)(c) of the *Act*, I amended the tenant's application to correct the landlord's name by including his last name.

Both parties agreed that the tenancy ended on June 4, 2018 when the tenant vacated the rental unit. As the tenancy was no longer ongoing, I advised the tenant that I was dismissing, without leave to reapply, the aspects of his application pertaining to an active tenancy, specifically his application to cancel a notice to end tenancy and his application for an order to restrict the landlord's access to the rental unit. These issues are now moot as the tenancy has already ended.

#### Issue(s) to be Decided

Is the tenant entitled to a monetary order for damage or compensation under the *Act*?

#### Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony presented, not all details of the submissions and arguments are reproduced here. Only the aspects of this matter relevant to my findings and the decision are set out below.

Although the tenant had previously lived for a short time at the rental unit as an occupant under another person's tenancy agreement, both parties agreed that this tenancy, between the tenant and the landlord, began on October 15, 2017, with monthly rent of \$750.00 due on the 15<sup>th</sup> of the month. The landlord acknowledged that the tenant had paid a security deposit of \$375.00, which continued to be held by the landlord. The tenant's rental agreement pertained to the rental of a room with access to a kitchen and bathroom shared by other occupants residing in three other rooms, in an upper level of a house.

The tenant claimed \$3,000.00 as compensation for loss of quiet enjoyment during the tenancy. The tenant testified that the original two other occupants in the rental property, with whom he had no issues, moved out around April 2018. The tenant stated that the subsequent occupants used drugs and created a situation which was not suitable to allow him to have his young daughter stay with him. Therefore, he stated that he had to find other accommodations for his daughter. The tenant did not submit any receipts to support his claim for compensation as he stated that he relied on friends and family to assist with taking care of his daughter.

The tenant stated that he sent emails to the landlord to complain about the situation regarding the other occupants of the rental property. The tenant did not submit any emails into documentary evidence to support his testimony.

The tenant claimed that the landlord has not returned his security deposit. The tenant did not provide the landlord with his forwarding address in writing as he stated that the landlord had his email address and he thought that was sufficient to allow the landlord to e-transfer the return of the security deposit to him. As explained in the Preliminary Issues section of this decision. The tenant provided his forwarding address to the landlord during the course of the hearing, and I have documented this address on the cover sheet of this decision.

The landlord disputed the tenant's testimony and stated that the tenant was using drugs and conducting prostitution in the rental property, and that the other occupants complained about the tenant to him. The landlord stated that the tenant moved in by himself, and to his knowledge, the tenant did not have full custody of his daughter. The landlord stated the tenant never complained to him about any issues regarding the other occupants. The landlord further questioned why the tenant never applied for dispute resolution regarding the issues during his tenancy, but that he has only complained about it now to seek compensation.

### Analysis

Section 67 of the *Act* provides that, where an arbitrator has found that damages or loss results from a party not complying with the *Act*, regulations, or tenancy agreement, an arbitrator may determine the amount of that damage or loss and order compensation to the claimant. The claimant bears the burden of proof. The claimant must show the existence of the damage or loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* by the other party. If this is established, the claimant must provide evidence of the monetary amount of the damage or loss. The amount of the loss or damage claimed is subject to the claimant's duty to mitigate or minimize the loss pursuant to section 7(2) of the *Act*.

In this case, the tenant has failed to provide any receipts to establish the existence of the damages due to loss of quiet enjoyment or to show that damages stemmed directly from the landlord's violation of the tenancy agreement or the *Act*. As such, on a balance of probabilities, I find that there is insufficient evidence provided by the tenant to prove his claim for damages in the amount of \$3,000.00 and I dismiss the tenant's application, without leave to reapply, in relation to this claim.

I find that the tenant has failed to provide the landlord with his forwarding address in writing and therefore, I find his request for compensation for the return of his security deposit to be premature and the landlord may still address the tenant's security deposit in accordance with the provisions of section 38(1) of the *Act*.

Therefore, as explained to both parties in the hearing, the landlord is provided with the tenant's forwarding address by way of this decision as it is noted on the cover sheet of the decision. **The landlord has 15 days from the deemed receipt date of this decision** to address the return of the tenant's security deposit in accordance with section 38(1) of the *Act*. The deemed receipt date of this decision is five days from the date of this decision. The date of this decision is noted in the Conclusion section of this decision.

Should the landlord fail to address the tenant's security deposit in accordance with section 38(1) of the *Act* within that time limit, the tenant will be at liberty to reapply for dispute resolution to claim double the amount of the security deposit pursuant to section 38(6) of the *Act*.

Conclusion

I dismiss the tenant's application for compensation in the amount of \$3,000.00 for loss of quiet enjoyment without leave to reapply.

I dismiss the tenant's application for compensation regarding the security deposit and grant the tenant liberty to reapply to request the return of double the security deposit, should the landlord fail to address the tenant's security deposit in accordance with section 38(1) of the *Act* within 15 days of the deemed receipt date of this decision.

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 23, 2018

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Residential Tenancy Branch