



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      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. An Order for the return of the security deposit - Section 38; and
2. A Monetary Order for compensation - Section 67.

The Landlords and Tenant were each given full opportunity under oath 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 following are agreed facts: The tenancy started on January 1, 2014 and, without an order of possession or a Writ from the Supreme Court, the Landlord took possession of the unit on September 22, 2017. Rent of \$820.00 was payable on the first day of each month. At the outset of the tenancy the Landlord collected \$380.00 as a security deposit. The Tenant did not provide its forwarding address prior to providing its address in the Tenant’s application.

The Tenant states that no move-in inspection was conducted. The Tenant claims return of the security deposit. The Landlord states that a move-in inspection was conducted with a different agent on January 1, 2013 and that the date of the inspection was set

down in error as having been done a year prior to the tenancy start date. The Landlord did not provide a copy of that inspection. The Landlord states that as the Tenant was out of the country and had abandoned the unit the Landlord had no way to contact the Tenant to make an offer for a move-out inspection. The Landlord states that they could not contact the Tenant by email. The Landlord states that they conducted the move-out inspection themselves and provided a copy of this inspection to the Tenant with an evidence package for a prior hearing.

The Tenant states that he is an international student attending studies here and that he was out of country for the summer, having left in June 2017. The Tenant states that for June, July, August, and September 2017 the Landlord contacted the Tenant by email each month informing the Tenant that rent was not paid. The Tenant states that the rent had been paid for each of these months and that the Tenant sent confirmation of such payments to the Landlord each month. The Tenant states that when he called the Landlord about the September 2017 rent payment to advise that the rent was paid, the Landlord told the Tenant that it did not matter since they were going to change the locks and move his property out of the unit. The Tenant states that he had left the keys to the unit with a friend to maintain the unit while the Tenant was away and that a few days after this call to the Landlord his friend went to the unit and found the locks had been changed. The Tenant states that a letter was left indicating that the Tenant had been evicted for non-payment of rent. The Tenant states that this note was not on an approved 10 day notice to end tenancy form. The Tenant claims refund of the September 2017 rent of \$820.00.

The Landlord states that they took possession of the unit on September 22, 2018 without any order of possession or Writ as the unit had been abandoned. The Landlord states that the last time they spoke with the Tenant was in relation to the unpaid rent for September 2018. The Landlord states that they believed the unit had been abandoned because the September 2017 rent had been returned NSF, because no response came from the Tenant after posing a few notices, calling and emailing the Tenant.

The Tenant states that the Landlord did contact the Tenant on September 4, 2017 by email asking about the rent. The Tenant states that the only method for the Landlord's contact was by email as the Tenant had no phone or voice mail. The Landlord states that the Tenant did not respond to their September 4, 2017 email. The Landlord states that the Tenant did not pay rent for September 2017. The Tenant states that the Landlord's email dated September 4, 2017 indicates that the Landlord did receive the September 2017 rent payment.

The Landlord states that they did receive a payment on September 2, 2017 but that this was then returned NSF. The Landlord states that the Tenant then repaid that NSF payment. The Landlord states that August 2017 rent is still outstanding. The Landlord also states that they have a claim for outstanding rent of \$820.00 for September 2017. The Landlord provides a copy of the accounting ledger for the rents collected.

The Tenant states that upon his return in December 2017 he had no place to reside so he stayed with friends for a period of time. The Tenant states that following this he stayed at a hotel for one night as he could no longer stay with friends. The Tenant claims the cost of the hotel for February 4, 2018 in the amount of \$69.00. The Tenant did not provide a receipt for this claim.

The Landlord states that the Tenant has not shown that the hotel cost was incurred as a result of the Landlord's taking possession of the unit in September 2017. The Landlord states further that the Tenant's evidence of costs is only a reservation notice and that this does not support that the Tenant incurred the costs claimed.

The Tenant states that the Landlord removed his belongings to a storage unit without right and that the Tenant had to incur cost to move his belongings out of storage. The Tenant claims the costs of \$59.67 and provides a receipt.

The Tenant states that he was able to obtain a new rental unit for March 2018 at an increased rental amount of \$1,000.00 per month. The Tenant states that had the Landlord not taken possession of the unit the Tenant would still be paying his rent of \$820.00. The Tenant claims eight months of extra monthly rent of \$180.00 as a loss arising from the Landlord's act for the period March to October 2018 inclusive in the amount of \$1,440.00.

The Landlord states that the Tenant is not entitled to this amount as the Tenant's lease would have ended anyway. The Landlord confirms that there is nothing in the tenancy agreement that requires the Tenant to move out of the unit on any date. The Landlord states that the letter is not evidence of a tenancy agreement and notes that the letter does not provide a phone number to contact the person who signed the letter as the Tenant's new landlord. The Landlord confirms that no investigation of the veracity of the letter was conducted such as attending at the address.

The Tenant states that the Landlord damaged the Tenant's bed frame as it was found broken in the storage room. The Tenant states that the frame was too large to fit in the storage room so the Landlord likely broke it to get it into the storage room. The Tenant states that the frame was 3 years old and has not been replaced as the Tenant does not currently require a frame. The Tenant claims the estimated replacement cost of \$269.00 and provides a photo. The Landlord denies that they broke the frame and states that even if it was damaged by the Landlord the amount claimed is unreasonable given its age and that a bedframe is not needed by the Tenant.

The Tenant states that a framed poster was missing from the items that the Landlord put in storage. The Tenant states that the poster was 2 years old and was greatly valued by the Tenant. The Tenant provides a photo of the poster on the wall of the unit and a copy and a copy of the list of possessions removed from the unit. The Tenant claims \$7.50. The Landlord argues that this claim is not reasonable because it is old, has depreciated in value and was in the storage.

The Tenant claims recovery of the \$100.00 filing fee for this current application and for the \$100.00 filing fee paid for the previous application that was dealt with in the previous Decision dated January 9, 2018. I note that this previous Decision dismissed the Tenant's application in its entirety. I also note that no filing fee was paid for the current application.

### Analysis

Section 44(1) of the Act provides that a tenancy ends where, inter alia, a landlord gives notice to end the tenancy in accordance with the Act. Section 46 of the Act provides that a landlord may end a tenancy for unpaid rent. Section 57(1) of the Act provides that an "overholding tenant" means a tenant who continues to occupy a rental unit after the tenant's tenancy is ended. Section 57(2) of the Act provides that a landlord must not take actual possession of a rental unit that is occupied by an overholding tenant unless the landlord has a writ of possession issued under the Supreme Court Civil Rules. Even if the Landlord ended the tenancy by giving the Tenant the 10 day notice to end tenancy for unpaid rent, and I note that there is no evidence of the effective date for the end of the tenancy arising from this notice, the Tenant could only be considered an overholding tenant after the effective date of the notice to end tenancy. As the Tenant could only be considered as overholding the unit and as the Landlord took possession of the unit without a writ of possession I find that the Tenant has substantiated that the Landlord breached the Act.

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. Although the Landlord's oral evidence of the months for which rent was owed was not consistent I note that the Landlord's ledger shows that as of September 1, 2018 the Tenant was noted to owe \$1,700.00 in unpaid rent including the \$820.00 rent for September 2017. I also note that the ledger indicates that the Tenant paid the \$1,700.00 in two separate payments of \$900.00 and \$800.00 on September 2

and 4, 2017. The ledger indicates that the one payment of \$900.00 was returned NSF leaving this \$900.00 outstanding. I note that the ledger indicates that the arrears of \$1,700.00 also include late fees and an NSF charge and consider therefore that the sum of \$900.00 is not comprised solely of unpaid rent. However given the Landlord's ledger evidence I find on a balance of probabilities that the only rent outstanding was for September 2017. Given that the Tenant's bank statement does not contradict the Landlord's journal entries of payments received and returned NSF, I find on a balance of probabilities that the Tenant did not pay any rent for September 2017 and has therefore not substantiated the loss of this rent. However as the Landlord also took possession of the Tenant's unit without right, I find that the Tenant is no longer liable for this rent in compensation for the Landlord's breach of the Act.

Section 26(3) and 26(4) of the Act provides that whether or not a tenant pays rent in accordance with the tenancy agreement, a landlord must not seize any personal property of the tenant, or prevent or interfere with the tenant's access to the tenant's personal property. This section does not apply if the landlord has a court order authorizing the action, or the tenant has abandoned the rental unit and the landlord complies with the regulations. Section 21(1) of the Regulations provides that a landlord may consider that a tenant has abandoned personal property if

- (a) the tenant leaves the personal property on residential property that he or she has vacated after the tenancy agreement has ended, or
- (b) subject to subsection (2), the tenant leaves the personal property on residential property
  - (i) that, for a continuous period of one month, the tenant has not ordinarily occupied and for which he or she has not paid rent, or
  - (ii) from which the tenant has removed substantially all of his or her personal property.

It is undisputed that the Landlord took possession of the unit on September 22, 2018. I consider therefore that this is the date that the Landlord also seized the Tenant's

personal property. Given the evidence of communications between the Parties through August and into September 2017 and as a full month had not expired with unpaid rent for September 2017 when the Landlord seized the Tenant's goods I find that the Landlord has not substantiated that the unit had been abandoned. The Landlord therefore had no right to seize the Tenant's belongings. Had the Landlord not acted without right it may very well be that the Tenant would not have had to incur costs for moving his furniture as the tenancy may very well have continued. As a result and given the moving receipt I find that the Tenant is entitled to the moving costs claimed of **\$59.67**.

As the Tenant did not provide a receipt to support the hotel costs claimed I find that the Tenant has not provided sufficient evidence to substantiate that the costs claimed were actually incurred. I therefor dismiss the claim for hotel costs.

I consider the Tenant's evidence of increased rental costs to be compelling and supported by the letter from his current landlord. Although the letter does not provide a contact number for the new landlord, it does provide a rental address and the name of the new landlord. As the Landlord provided no evidence to support that the letter is fraudulent or contrived, and as the Tenant was not given any rent increase that might reduce the rental losses claimed, I find on a balance of probabilities that the Tenant did incur a greater cost for rent than would have had the Landlord not acted to take possession of the rental unit without right. I find therefore that the Tenant has substantiated the rental costs claimed of **\$1,440.00**.

Although I find on a balance of probabilities, given the Tenant's photo, that the Landlord caused the bed frame to be damaged, as the Tenant has not shown that it incurred any costs for this loss and considering that the bed frame was not new, I find that the Tenant is only entitled to a nominal sum of **\$50.00** for this loss and I dismiss the additional amount claimed of \$219.00.

Although I can accept that the Tenant was not provided with its poster, as the Tenant provided no evidence that it incurred the costs claimed to obtain the new poster I find that the Tenant has not substantiated the costs claimed and I dismiss the claim for \$7.50.

Section 77(3) of the Act provides that a decision is final and binding on the parties. As the previous Decision dismissed the entire application and is final and binding I find that the Tenant is not entitled to recovery of that previous filing fee of \$100.00.

As a filing fee may have been paid for the current application but considering that the Tenant did not make any claim on the application for its return I decline to award recovery of the filing fee.

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. As there is no evidence that the Tenant provided its forwarding address to the Landlord prior to making the application for its return but as the Landlord now has the Tenant's confirmed forwarding address, I find that, on the date of this hearing, the Landlord has effectively received the Tenant's forwarding address in writing. The Landlord now has 15 days from the date of receipt of this Decision to deal with the security deposit as required under the Act. I dismiss the Tenant's claim for return of the security deposit with leave to reapply should the Landlord fail to deal with the deposit as required under the Act.

### Conclusion

I grant the Tenant an order under Section 67 of the Act for **\$1,549.67**. 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: October 24, 2018

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Residential Tenancy Branch