



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDCT MNSD FFT

### Introduction

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

- the return of the security deposit pursuant to section 38 of the *Act*;
- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement, pursuant to section 67 of the *Act*; and
- recovery of the filing fee for this application from the landlord pursuant to section 72 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. The tenant attended with her sister M.K. acting as an assistant. Landlord D.T. attended and confirmed that she was acting on behalf of both landlords named in this matter.

As both parties were present, service of documents was confirmed. The landlord confirmed receipt of the tenant's Notice of Dispute Resolution Proceeding package and evidence by Canada Post registered mail, as such I find that the landlord was served with the documents for this hearing in accordance with sections 88 and 89 of the *Act*.

The landlord testified that she tried to serve her evidence on the tenant to the address for service provided on the tenant's application, however, the landlord explained that the address was UPS location and the tenant's mailbox was no longer in service, so the UPS staff would not accept service of the documents. The landlord then served the tenant by courier on July 4, 2019. The tenant confirmed that her UPS mailbox account was closed as of July 2, 2019 and that she received the landlord's evidence on July 4,

2019 from the courier. As such, I find that the tenant was sufficiently served with the landlord's evidence in accordance with section 71(2)(b) of the *Act* on July 4, 2019.

### Issue(s) to be Decided

Is the tenant entitled to the return of the security deposit? If so, is the tenant entitled to a monetary award equivalent to the value of the security deposit because of the landlords' failure to comply with section 38 of the *Act*?

Is the tenant entitled to a monetary award as compensation for damage or loss due to the landlords' failure to comply with the *Act*, regulations or tenancy agreement?

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

### 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.

A copy of the written tenancy agreement was submitted into documentary evidence by the tenant. The parties confirmed the following information pertaining to the tenancy agreement:

- This fixed-term tenancy began on February 1, 2018, with a scheduled end date of January 31, 2019.
- Monthly rent of \$1,400.00 was payable in advance on the 30th day of the month.
- The tenant paid a security deposit of \$700.00 at the beginning of the tenancy, which the landlord continues to hold.
- The tenancy ended on April 7, 2018.

The tenant testified that she provided her forwarding address in writing to the landlords by posting it on the rental unit door on April 7, 2018. The landlord testified that she never received it and only received the tenant's address for service by being served with the tenant's application for dispute resolution for this matter.

The parties confirmed that there had been a prior arbitration hearing between them on April 5, 2018 resulting in a settlement decision (file number noted on the cover sheet of this Decision) between the parties to end the tenancy on April 8, 2019.

The tenant's monetary worksheet set out 21 heads of claim sought by the tenant, which included double the security deposit as statutory compensation provided by section 38(6) of the *Act*; costs associated with moving out from the rental unit; cost of room heater and heating pad; cost related to lost wages; reimbursement of rent costs for February, March and April 2018; and costs of the filing fee from the prior arbitration hearing and the recovery of the filing fee for the current application, as well as administrative costs pertaining to preparation of the current Application for Dispute Resolution;

The tenant claimed there was insufficient heat and hot water and excessive noise during the tenancy. The tenant submitted into evidence a letter dated February 28, 2018 which she provided to the landlord setting out her concerns.

The landlord confirmed she received the letter and arranged to have a plumber attend at the rental unit to investigate the issues. The landlord submitted into evidence a written statement from the plumber which noted that the radiators in both the tenant's lower rental unit and the upper rental unit needed servicing. The plumber's statement indicated that it would take a week for him to come back and fix the problem. The plumber's statement noted that when he had tried to arrange a time to come back to finish the work, the landlord was unable to reach the tenant to allow access. When the plumber did get access to the rental unit to fix the heat issue, the plumber's statement indicated that the tenant complained it was too hot. I note that the plumber's statement confirmed that the tenant had heaters in the rental unit.

The landlord submitted into evidence an email from the upper rental unit occupants confirming that the landlord had spoken with them and that they disputed the tenant's claims that they wore shoes inside the house causing noise, that the thermostat was not set high enough and the lack of hot water.

The tenant filed an Application for Dispute Resolution on March 14, 2018 requesting an order for the landlord to provide services or facilities required by the tenancy agreement or law. As explained earlier in this Decision, the parties attended a hearing and came to a settlement agreement in which the tenant's claim for compensation was dismissed with leave to reapply and the parties agreed to end the tenancy on April 8, 2018. I note the prior decision ordered the tenant's claim to recover the cost of the \$100.00 filing dismissed without leave to reapply.

## Analysis

The purpose of compensation is to put the claimant who suffered the damage or loss in the same position as if the damage or loss had not occurred. Therefore, 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*.

Where the claiming party has not met all of the above-noted four elements, the burden of proof has not been met and the claim fails.

Based on the testimony and evidence presented, on a balance of probabilities, I have addressed the tenant's 21 heads of claim for compensation separately as identified on the monetary worksheet, as follows.

### *Costs Related to Moving (Items 1-5, 8-11, and 20)*

The parties came to a settlement agreement in the prior hearing held on April 5, 2018 to end the tenancy on April 8, 2018, as noted by the arbitrator in the decision, as follows, in part:

*The parties indicated a desire to end this tenancy, which began on February 1, 2018. The Tenant stated that "new events" had occurred since she made her Application and that she "left on March 28, 2018, and have not been back since".*

...

*The parties come to an agreement that the tenancy will end on April 8, 2018, at 1:00 p.m. The parties were advised, and understood, that the Landlords would be provided with an Order of Possession for that date and time.*

*The tenancy is ending and therefore the Tenant's application for repair order(s), an order that the Landlords comply with the Act, and an Order that the Landlords provide services or facilities to the Tenant are moot and are dismissed.*

...

*The parties came to a mutual agreement with respect to the end of the tenancy and the remainder of the Tenant's application was either dismissed outright, or dismissed with leave to reapply.*

As the tenant had already left the rental unit prior to the hearing and mutually agreed to the landlord being provided with an Order of Possession, I find that it was the tenant's choice to end the tenancy rather than address the issues under dispute through the hearing. Therefore, I do not find that the tenant's moving-related costs stemmed directly from the actions of the landlord and as such, the tenant's claims are dismissed without leave to reapply.

*Recovery of Filing Fee for Prior Application for Dispute Resolution (Item 6)*

As explained earlier in this Decision, the prior arbitrator ordered the tenant's claim to recover the cost of the filing fee dismissed without leave to reapply. Therefore this claim is res judicata as the tenant was not entitled to reapply for this claim.

*Heater and Heating Pad (Items 12 and 13)*

As explained below in the section for "Reimbursement for Rent (Items 16, 17 and 18), I find that there was a period of a week in which the tenant waited to have the heating issues fixed in the rental unit. It was confirmed by both the landlord and the plumber that the tenant had heaters in the rental unit, therefore I find that the tenant is entitled to a monetary award for the cost of these items totaling \$139.98 [calculated as \$89.59 + 50.39].

*Lost Wages (Items 14 and 15)*

The tenant was at liberty to have an agent attend on her behalf to allow access to the rental unit therefore I do not find the tenant's lost wage costs stemmed directly from the actions of the landlord and as such, the tenant's claims are dismissed without leave to reapply.

*Reimbursement for Rent (Items 16, 17 and 18)*

I find that the tenant notified the landlord in writing on February 28, 2018 of her concerns regarding the insufficient heat and hot water in the rental unit, and noise disturbance from the upper rental unit occupants. As such, I have considered the landlord's response to the tenant's concerns as of the date of notification of this issues in writing. I find that the tenant failed to provide sufficient evidence that the landlord was responsible for the tenant's lack of quiet enjoyment due to the noise created by the occupants upstairs as the landlord discussed the tenant's concerns with the upstairs occupants and the upstairs occupants disputed the tenant's claims. I find that the landlord responded in a timely manner to send a plumber to respond to the concerns of insufficient heat, however it took approximately a week to correct the heating issue. As

well, in reviewing the tenant's submitted summary of hot water availability, I find that there was approximately a week after February 28, 2019 in which the tenant claimed she had no hot water and/or had to attend her sister's home to take a shower.

As such, I find that the tenant is entitled to a reimbursement of rent for the period of one week for lack of heat and hot water. As the tenant's monthly rent established in the tenancy agreement was \$1,400.00, I find the tenant entitled to a monetary award of \$316.13 [calculated as \$1,400.00 / 31 days X 7 days] for reimbursement of rent.

*Security Deposit (Item 19)*

The *Act* contains comprehensive provisions for addressing security and/or pet damage deposits at the end of the tenancy. Both the landlord and the tenant have responsibilities under section 38 of the *Act*.

Section 38(1) of the *Act* requires the landlord to either return the tenant's security deposit in full or file for dispute resolution for authorization to retain the deposit 15 days after the later of:

- (a) the date the tenancy ends, **and**
- (b) the date the landlord receives the tenant's forwarding address in writing

Where a tenant seeks the return of the security deposit, the tenant bears the burden to prove when and how a written forwarding address was given to the landlord since a landlord is not required to take action with respect to the security deposit unless a written forwarding address is received from the tenant.

The legislation is very specific about the requirement for a tenant to provide their forwarding address in writing in order to "trigger" the 15-day time limit for the landlord to return the security deposit. This provision in the legislation ensures that the landlord has the current and correct address for the tenant so that the security deposit refund does not get lost or misdirected by being sent to an incorrect or inactive address, as well it allows the landlord to have an address for service of documents in the event the landlord applies for dispute resolution against the tenant.

In this case, the tenant acknowledged in her testimony during the hearing that she provided the landlord with her forwarding address in writing by posting it on the rental unit door.

Posting on the rental unit door is not one of the acceptable methods for providing written notice as set out in section 88 of the *Act* noted below:

- 88 All documents, other than those referred to in section 89 [*special rules for certain documents*], that are required or permitted under this *Act* to be given to or served on a person must be given or served in one of the following ways:
- (a) by leaving a copy with the person;
  - (b) if the person is a landlord, by leaving a copy with an agent of the landlord;
  - (c) by sending a copy by ordinary mail or registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;
  - (d) if the person is a tenant, by sending a copy by ordinary mail or registered mail to a forwarding address provided by the tenant;
  - (e) by leaving a copy at the person's residence with an adult who apparently resides with the person;
  - (f) by leaving a copy in a mailbox or mail slot for the address at which the person resides or, if the person is a landlord, for the address at which the person carries on business as a landlord;
  - (g) by attaching a copy to a door or other conspicuous place at the address at which the person resides or, if the person is a landlord, at the address at which the person carries on business as a landlord;
  - (h) by transmitting a copy to a fax number provided as an address for service by the person to be served;
  - (i) as ordered by the director under section 71 (1) [*director's orders: delivery and service of documents*];
  - (j) by any other means of service prescribed in the regulations.

As such, I find that the tenant's Application to recover the security deposit is premature as the landlord was not served with the tenant's address for service except for it being contained in the tenant's Notice of Dispute Resolution Proceeding package which provided a written "Address for Service of Documents" for the tenant. However, in the hearing the tenant testified the address for service in the notice of dispute is no longer valid.

Therefore, should the tenant wish to serve the landlords with a valid forwarding address through an acceptable method of service as set out in section 88 of the *Act*, the landlords may still address the tenant's security deposit in accordance with the provisions of section 38(1) of the *Act*, noted in part below:

- (c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;
- (d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

To clarify, this means that the tenant has 15 days from the deemed receipt date of this decision to provide the landlords with a valid forwarding address in writing through an acceptable method of service. 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.

The landlords have 15 days from the deemed receipt date of the tenant's forwarding address in writing to address the tenant's security deposit in accordance with section 38 of the *Act*. The deemed receipt date of tenant's forwarding address is five days from the date the tenant can prove the landlord was served with the forwarding address in writing. Should the landlords fail to address the security deposit within that timeline, 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*.

*Disbursement/Administrative Costs Related to Application (Item 21)*

While provisions regarding disbursement or administrative costs are provided for in Supreme Court Proceedings, they are specifically not included in the *Residential Tenancy Act*. I conclude that this exclusion is intentional and includes disbursement and administrative costs incurred in the preparation or service of an application for dispute resolution such as registered mailing, printing and digital evidence submission. Therefore, the tenant's claim for the cost of the USB key is dismissed without leave to reapply.

*Recovery of the Filing Fee for This Application for Dispute Resolution (Item 7)*

As the tenant was only successful in a portion of her claims for compensation at this hearing, I find that the tenant may only recover a portion of the cost of the filing fee for this application in the amount of \$50.00.

In summary, I issue a Monetary Order in the tenant's favour of \$506.11, as explained below:



<b>Item</b>	<b>Amount</b>
Heater and Heating Pad (Items 12 and 13)	\$139.98
Reimbursement for Rent (Items 16, 17 and 18)	\$316.13
Recovery of a portion of the filing fee from the landlords	\$50.00
<b>Total Monetary Order in favour of the tenant</b>	<b>\$506.11</b>

### Conclusion

I grant a Monetary Order in the tenant's in favour of \$506.11.

The tenant is provided with this Order in the above terms and is required to serve this Order on the landlords as soon as possible. Should the landlords fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court, where it will be enforced as an Order of that Court.

The tenant's application for the return of the security deposit was dismissed as premature. The tenant may serve the landlords in accordance with the section 88 of the *Act* with a valid forwarding address in writing within 15 days to request the return of the deposit. The landlords, upon receipt of the tenant's forwarding address must address the security deposit in accordance with section 38(1) of the *Act*.

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 24, 2019

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Residential Tenancy Branch