



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **REVIEW HEARING DECISION**

Dispute Codes      RPP, MNRT, MNDCT, MNSD, FFT

### Introduction

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

- an order for the return of the tenant's personal property, pursuant to section 65;
- a monetary order for the cost of emergency repairs and for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation (Regulation)* or tenancy agreement, pursuant to section 67;
- authorization to obtain a return of the tenant's security deposit, pursuant to section 38; and
- authorization to recover the filing fee for this application, pursuant to section 72.

The landlord, the landlord's agent, and the tenant attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The landlord confirmed that his agent had permission to speak on his behalf at this hearing. This hearing lasted approximately 37 minutes.

### Preliminary Issue - Previous Hearings and Service of Documents

The original participatory hearing in this matter occurred on October 29, 2019 ("original hearing") after which a decision of the same date was issued ("original decision") by a different Arbitrator. The original decision dismissed the tenant's application ("original application") because the tenant-applicant did not attend the hearing.

The tenant applied for a review of the original decision, alleging that he was unable to attend the original hearing. A new review hearing was granted by a different Arbitrator, pursuant to a review consideration decision, dated November 20, 2019 ("review

decision"). As per the review decision, the tenant was required to serve the landlord with a copy of the review decision and the new notice of review hearing.

The landlord confirmed receipt of the above review documents. Accordingly, I find that the landlord was duly served with the required review documents, as per sections 89 and 90 of the *Act*.

#### Preliminary Issue - Service of Tenant's Original Application and Evidence

The landlord confirmed receipt of the tenant's original application and evidence. In accordance with sections 89 and 90 of the *Act*, I find that the landlord was duly served with the tenant's original application and evidence.

The tenant confirmed receipt of the landlord's original evidence package. In accordance with sections 88 and 90 of the *Act*, I find that the tenant was duly served with the landlord's original evidence package.

#### Issue to be Decided

Is the tenant entitled an order for the return of his personal property?

Is the tenant entitled to a monetary order for the cost of emergency repairs and for compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement?

Is the tenant entitled to the return of his security deposit?

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

#### Background and Evidence

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

Both parties agreed to the following facts. This tenancy began on October 1, 2017. Monthly rent in the amount of \$3,000.00 was payable on the first day of each month. A security deposit of \$1,500.00 was paid by the tenant and the landlord continues to retain this deposit. A move-in condition inspection report was completed but a move-out condition inspection report was not completed for this tenancy. The landlord did not

have written permission to keep any part of the tenant's security deposit. The landlord did not file an application to retain the deposit.

The landlord claimed that the tenant vacated the rental unit on July 1, 2019 and the tenant claimed that it was on June 22, 2019.

The tenant claimed that he provided a written forwarding address to the landlord on June 20, 2019, by way of email and text message. The landlord denied receipt of the email and text message, claiming that he received it on July 20, 2019, by way of the tenant's original application.

The tenant seeks a monetary order of \$3,570.00. The tenant seeks the return of his security deposit of \$1,500.00. The tenant seeks \$1,570.00 for his dryer not working, having two small kids to do laundry for, the landlord not changing the back fence at the rental property as agreed, and the landlord not changing the carpets on the ground floor as agreed. The tenant said that he spent \$200.00 and \$150.00 to replace the dryer at the rental unit. The tenant seeks \$950.00 for buying a gas stove that he said he wants back, or the landlord can reimburse him for the cost. The tenant seeks \$500.00 for having to pay a carpenter to fix the back stairs at the rental unit.

The landlord disputes the tenant's entire application. The landlord's agent said that the landlord replaced the floors in the rental unit on July 20, 2017. The tenant denied this, stating that the landlord only partially replaced the carpet in the kitchen, he did not replace the ground floor carpets. The landlord's agent said that the landlord paid the tenant \$450.00 for the gas stove that the tenant purchased, claiming this was an agreement between the parties for the landlord to keep the stove. The tenant denied any such agreement.

The landlord's agent explained that the landlord retained the tenant's entire security deposit because the tenant caused damages that the landlord had to repair, and the landlord had to clean after the tenant moved out. The landlord's agent said that the back fence was never put in, as per a mutual agreement between the parties. The landlord's agent maintained that the landlord replaced the dryer with a used dryer three days after the tenant complained of the issue.

### Analysis

Pursuant to section 67 of the *Act*, 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.

On a balance of probabilities and for the reasons stated below, I dismiss the tenant's application for \$3,020.00, without leave to reapply. I find that the tenant was unable to justify the \$3,020.00 amount being claimed. I find that the tenant failed all four parts of the above test. The landlord disputed all of the tenant's claims.

During the hearing, the tenant did not go through any of his written evidence, including any receipts, invoices, estimates, or any other documents. The tenant simply stated what he applied for and did not even provide a proper breakdown of the above amounts. I notified the tenant repeatedly during the hearing that he had the burden of proof to prove his claim and to go through his evidence so I could understand what he applied for and why, and yet he failed to do so. The tenant spent very little time explaining his claim, despite me asking whether he wanted to add any information or to explain his claim further.

I find that the tenant was unable to justify the \$1,570.00 being claimed for the back fence, the carpets and the dryer. He simply indicated that he spent \$350.00 total to replace the dryer but did not go through any proof of same. He did not indicate what amount was for the fence and why he was seeking it and what amount was for the carpets and why he was seeking new carpets. I find that the tenant was unable to show he paid \$950.00 for the gas stove and how or when he paid this amount, when the landlord claimed to have paid the tenant for the gas stove. I find that the tenant is not entitled to a return of the gas stove, as the landlord claimed that he paid the tenant to keep it, by way of an agreement. I find that the tenant was unable to prove the \$500.00 being sought for a back stairs issue and what exactly this claim was for.

The landlord continues to hold the tenant's security deposit of \$1,500.00. I find that the tenant is not entitled to the return of double the value of his security deposit, as per section 38 of the *Act*, since the tenant did not provide his forwarding address in writing

as per section 88 of the *Act*. Email and text message are not permitted by section 38 of the *Act*.

The tenant claimed that he sent his forwarding address to the landlord on June 20, 2019. The tenant did not go through the email or text message that he provided for this hearing to confirm service of his forwarding address. The tenant's email is dated July 10, 2019, not June 20, 2019. The tenant's text message is dated for June 29, 2019, not June 20, 2019. The text message just has an address, no information of what the address is for.

The landlord claimed that he received the tenant's address by way of the tenant's original application, not by email or text message. Therefore, I find that the landlord received the tenant's forwarding address by way of the tenant's original application, which is not permitted by section 88 of the *Act*. However, I find that the landlord received the address and had more than ample time to file an application to retain the tenant's deposit or return it to the tenant.

Over the period of this tenancy, no interest is payable on the tenant's security deposit. As per section 38 of the *Act*, I find that the tenant is entitled to the return of his security deposit of \$1,500.00. The tenant is provided with a monetary order for same.

### Review Decision

Section 82(3) of the *Act* states:

*Following the review, the director may confirm, vary or set aside the original decision or order.*

In accordance with section 82(3) of the *Act*, I set aside the original decision dated October 29, 2019.

### Further Reviews

I caution the tenant to review section 79(7) of the *Act*, which states that a party may only apply once for a review consideration:

*79 (7) A party to a dispute resolution proceeding may make an application under this section only once in respect of the proceedings.*

Conclusion

The original decision, dated October 29, 2019, is set aside.

I issue a monetary Order in the tenant's favour in the total amount of \$1,500.00, against the landlord. 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 remainder of the tenant's application 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: January 14, 2020

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Residential Tenancy Branch