



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNSD, MNDCT, FFT

### Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant for the return of the security deposit, for a monetary order for compensation for loss or other money owed and to recover the cost of the filing fee.

Both parties appeared, gave affirmed testimony, and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

### Preliminary and Procedural matters

At the outset of the hearing the parties confirmed they were not making any unauthorized recording of the hearing in compliance with Rule 6.11.

At the outset of the hearing, I had asked the tenant if the co-tenant would be attending. The tenant stated that the co-tenant is their 12-year-old child and that they should have not named them in their application. In this case I find it appropriate to remove JO from the Style of Cause, as they are child of the tenant and not responsible for the tenancy.

At the outset of the hearing the landlord's representative (the "landlord") stated that they were never served with the tenant's application for dispute resolution or evidence. The landlord stated they had to contact the Residential Tenancy Branch to find out the information that is subject to this dispute.

The tenant stated that they took a picture and sent that to the landlord showing the date and information to call into the hearing.

Based on the above, I had considered dismissing the tenant's application with leave to reapply as the landlord was not served in accordance with 89 of the Act. However, the landlord wanted to proceed.

As the tenant did not served the landlord with evidence in accordance with the Residential Tenancy Branch Rules of Procedure. I must exclude that evidence. I note this was a copy of the tenancy agreement, a rent receipt for December, which the parties can provide evidence at this hearing. The last is a video clip said to be of mice this I cannot consider as it was not served upon the other party.

As the landlord's evidence was sent to the tenant by email, which is not a permitted method under the Act, I must exclude that evidence. I note in any event that is unrelated as it is related to unpaid utilities, which is not an issue for me to consider at today's hearing.

At the outset I clarified with the tenant their monetary claim for monetary loss or other money owed, as it did not provide a detail calculation of the amount of \$2,250.00. The tenant stated they are seeking the rent for December 2020 returned (\$1,300.00). When I asked the question of the tenant why their claim for monetary compensation is in the amount of \$2,250.00. The tenant stated that they are only claiming the return of rent and it was their sister that filed the application on their behalf.

#### Issues to be Decided

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

Is the tenant entitled to monetary compensation for loss or other money owed?

#### Background and Evidence

The parties agreed that the tenancy began on September 15, 2019. Rent in the amount of \$1,300.00 was payable on the 15th of each month. A security deposit of \$650.00 was paid by the tenant. The tenant stated they vacated the premise on December 24, 2020. The landlord stated that the tenant did not clean or return the keys until December 30, 2020.

#### Return of Security Deposit

The tenant testified that they want their security deposit back. The tenant stated that they did not send the landlord their forwarding address prior to making this application.

The landlord testified that the tenant did not provide their forwarding address prior to them receiving a copy of the application from the Residential Tenancy Branch.

#### Return of December 2020 Rent

The tenant testified that they are seeking the return of all of December 2020 rent because on the evening of December 19, 2020 they sent a text message to the landlord that the water was dripping from the ceiling and they had to put a bucket under it to collect the water.

The tenant testified that the landlord came the next day and said they were going to put plastic over the area that was leaking. The tenant stated someone went on the roof; however, they did not see any plastic on the roof. The tenant stated that they also demanded that the landlord bring in a professional heater to get the moisture out of the room. The tenant stated that they were concerned with mould growth. The tenant stated the landlord did nothing so on December 23, 2020 they found alternate housing and moved out on December 24, 2020.

The landlord testified that they were at the rental unit on Sunday, December 20, 2020, and they had determined it was not the roof leaking it was water coming through a vent. The landlord stated that they covered the vent so no further water could come through.

The landlord testified that they could not bring in a professional heater as that would not resolve a moisture problem, they needed to get a professional dehumidifier which was not available on that day because the store was closed on the Sunday. The landlord stated on the Monday, December 21, 2020, the tenant informed them not to bother coming with one, because they were moving out. The landlord stated that the tenant was very argumentative and was not listening to what they were saying.

The landlord testified that they responded to the tenant in a reasonable time and it was a minor repair of fixing the vent and it did not justify the tenant vacating with one day notice. The landlord stated the tenant is not entitled to return of rent as they did not end their tenancy in accordance with the Act.

#### Analysis

In a claim for damage or loss under the Act or tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard,

that is, a balance of probabilities. In this case, the tenant has the burden of proof to prove their claim.

Section 7(1) of the Act states that if a landlord or tenant does not comply with the Act, regulation, or tenancy agreement, the non-comply landlord or tenant must compensate the other for damage or loss that results.

Section 67 of the Act provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

### Return of Security Deposit

#### **Return of security deposit and pet damage deposit**

**38** (1) Except as provided in subsection (3) or (4) (a), within 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,

the landlord must do one of the following:

- (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.

I find the tenant's application for the return of the security deposit premature as they did not provide the landlord with the forwarding address prior to making this application, nor did they serve that application on the landlord.

However, I find it appropriate to confirm the tenant's forwarding address today, May 13, 2021, which that address is noted in their application for dispute resolution. I confirmed with the landlord that they have now been sufficiently served with the tenant's forwarding address and must comply with section 38 of the Act, which they must within 15 days after today, May 13, 2021, either return the security deposit to the tenant or make an application claiming against it. The landlord must do one of the above, no later than May 28, 2021.

Return of December 2020 Rent

**Tenant's notice**

**45** (1)A tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that

- (a)is not earlier than one month after the date the landlord receives the notice, and
- (b)is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

...

(3) If a landlord has failed to comply with a material term of the tenancy agreement and has not corrected the situation within a reasonable period after the tenant gives written notice of the failure, the tenant may end the tenancy effective on a date that is after the date the landlord receives the notice.

(4)A notice to end a tenancy given under this section must comply with section 52 [*form and content of notice to end tenancy*].

In this case the tenant is seeking the return of rent they paid for December 2020, due to the leak in the ceiling that started on December 19, 2020. The landlord attended the property on December 20, 2020 and temporarily made the repair to the leaking vent.

Both parties provided a different version of events that occurred over the next few days. The tenant's version that the landlord did not provide the demanded heater and did nothing. The landlord's version was that you cannot use a heater to draw moisture from the premise and could not obtain a dehumidifier until the next day as the store was closed as it was a Sunday. The evidence of the landlord was that when they spoke to the tenant they were informed not to bring it over, as they were moving out of the premise. The evidence of the tenant was that they secured alternate housing on December 23, 2020 and vacated on December 24, 2020.

In this case, even if I accept the tenant's version, I find they did not have the right to end the tenancy by giving notice on December 23, 2020 that they were vacating on December 24, 2020. The landlord made a temporary repair within a reasonable time as they had covered the leaking vent on December 20, 2020, the day after they were notified of the problem.

Under the Act, the tenant had two ways to end the tenancy as this appears to be a month-to-month tenancy. The first way is under Section 45 (1) of the Act, the tenant can give the landlord at least one-month notice to end the tenancy. The second way is under Section 45(3) of the Act, the tenant can give the landlord notice to end the tenancy, if a landlord has failed to comply with a material term of the tenancy agreement and has not corrected the situation **within a reasonable period after the tenant gives written notice of the failure.**

If the tenant truly believed the landlord had breached a material term of the tenancy agreement, by not providing them with a heater, the tenant was required to inform the landlord in writing, state the problem and that it must be fixed by a **reasonable deadline**, and if the problem is not fixed by the deadline, the party will end the tenancy. This is set out in the Residential Tenancy Policy Guidelines 8 Unconscionable and Material Terms.

The tenant did not do this, nor did they give the landlord reasonable time to rectify the problem as the landlord first became aware on the issue on or about December 19, 2020 and the tenant had found alternate house three days later. Further, this would be considered temporary discomfort or inconvenience and does not constitute a breach of the Act by the landlord.

Based on the above, I find the tenant did not end their tenancy in accordance with Section 45(1) or 45(3) of the Act. I find the tenant breached the Act when they failed to give the landlord sufficient notice to end the tenancy. I find the tenant is not entitled to receive any portion of the rent paid for December 2020, as the landlord is entitled to be in the same position had the breach of the Act by the tenant had not occurred. Therefore, I dismiss this portion of the tenant's application for the return of December 2020, rent without leave to reapply.

### **Conclusion**

The tenant's application for the return of the security deposit was premature. The landlord now has been sufficiently served with the tenants forwarding address and has until May 28, 2021 to either claim against the security deposit or return it to the tenant. Should the landlord do neither of the above within the time frame, I grant the tenant leave to reapply.

The tenant's application for return of rent for December 2020, 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*.

Date May 13, 2021

---

Residential Tenancy Branch