



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Ministry of Housing

## DECISION

Dispute Codes      MNRT, MNDCT, MNSD

### Introduction

This hearing dealt with the Tenant's application under the *Residential Tenancy Act* (the "Act") for:

- a Monetary Order of \$450.00 for the cost of emergency repairs that Tenant made during the tenancy pursuant to section 33;
- a Monetary Order of \$1,400.00 for the Tenant's monetary loss or money owed by the Landlords pursuant to section 67; and
- return of the Tenant's security deposit and/or pet damage deposit in the amount of \$1,400.00 pursuant to section 38.

The Landlords and the Tenant attended this hearing. They were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

All attendees were advised that the Residential Tenancy Branch Rules of Procedure prohibit unauthorized recordings of dispute resolution hearings.

The parties did not raise any issues with respect to service of documents for dispute resolution. The Landlords confirmed receipt of the Tenant's notice of dispute resolution proceeding package and documentary evidence (collectively, the "NDRP Package"). I find the Landlords were served with the NDRP Package in accordance with sections 88 and 89 of the Act. The Tenant confirmed receipt of the Landlords' documentary evidence. I find the Tenant was served with the Landlords' documentary evidence in accordance with section 88 of the Act.

### Preliminary Matter – Amendment of Application

The Tenant's application initially included a claim to recover the filing fee. However, records of the Residential Tenancy Branch indicate that the Tenant had received a fee waiver for this application. As such, I have amended the application to remove this claim pursuant to section 64(3)(c) of the Act.

### Issues to be Decided

1. Is the Tenant entitled to \$450.00 for emergency repairs?
2. Is the Tenant entitled to \$1,400.00 for monetary loss or other money owed?
3. Is the Tenant entitled to a return of double the security deposit?

### Background and Evidence

While I have turned my mind to all the accepted documentary evidence and the testimony presented, only the details of the respective submissions and arguments relevant to the issues and findings in this matter are reproduced here. The principal aspects of this application and my findings are set out below.

This tenancy commenced on May 15, 2018 and ended on May 13, 2020. Rent was \$850.00 per month. The Tenant paid a security deposit of \$425.00. A copy of the tenancy agreement has been submitted into evidence.

The Tenant submitted this application on May 10, 2022.

The Tenant testified that she had experienced noise issues with individuals residing in the suite above the rental unit. The Tenant stated that she had conversations with one of the Landlords, GS, about the noise issues but was told to handle them herself and to contact the strata property manager. The Tenant described being very upset with this situation.

The Tenant stated that one day when she was home, she noticed flickers of light in her apartment. The Tenant stated that she saw daylight coming through the space between the refrigerator and wall. The Tenant stated she realized that the Landlords must have a wire camera since she noticed wires in the cavity. The Tenant stated that once she made the situation known to the Landlords, the wires disappeared. The Tenant stated that she suffered from post-traumatic stress disorder due to this situation, which was

why it took the Tenant so long to claim her security deposit. According to the Tenant's written submissions, she decided to move out of the rental unit following the discovery.

The Tenant referred to a \$450.00 plumbing invoice dated August 14, 2019, with the following description:

Two day drain cleaning. Issue required taking apart drainage underneath suite at nearest clean out and hitting with sectional auger. Service work + driving time. (6 hours total x two techs)

According to the Tenant, she was told by the plumber there was black sludge at the end of the pipe. The Tenant stated that she did not think this was from vegetables in a matter of days, and must have been caused by something else.

During the hearing, the Tenant confirmed that she is not claiming compensation for noise. The Tenant explained that the \$1,400.00 compensation she had sought on her application was calculated based on (1) a return of double the \$425.00 security deposit (\$850.00), (2) compensation for the \$450.00 plumber bill, and (3) reimbursement of the \$100.00 filing fee, or  $\$850.00 + \$450.00 + \$100.00 = \$1,400.00$ .

The Tenant's application indicates that the Tenant's forwarding address was served on the Landlords via registered mail on April 13, 2020. During the hearing, the Tenant stated that she did not provide her forwarding address via registered mail. The Tenant testified that on or around April 14, 2020, she went to pick up her post-dated cheques from the Landlords' home underneath the door mat. According to the Tenant, she left her notice to vacate letter with a forwarding address for the Landlords under their doormat. The Tenant stated that she had to pick up cheques twice.

In response, GS submitted that he had received a call from the Tenant on or about August 13, 2019, saying that she was grinding vegetables down the sink and had plugged it. GS stated that he went over to help and tried plunging the sink. GS submitted that he tried a drain cleaning chemical and more plunging. GS submitted that he asked the Tenant to wait overnight to see if the chemical would work, and if not, the Tenant would have to call a professional plumber to repair as she had caused the clog.

According to GS, he had forwarded the Tenant's noise complaints to the building caretakers each time. GS stated that one time the Tenant invited him over to listen for

noise, but the neighbours weren't making noise at that point and so GS didn't hear anything.

GS submitted that the hole behind the fridge had been there when the Tenant moved in. GS explained that a piece of the wall had been taken out to take to the paint store for colour matching paint from the Landlords' previous tenants. GS stated that the hole is in an interior wall behind the fridge and borders the bedroom wall. GS denied that there was a camera in the hole. GS stated that he did not see any wires when he was asked by the Tenant to take a look.

GS testified that he recalls putting the post-dated cheques under the mat for the Tenant to pick up, but stated that it would have been done after the Tenant had moved out of the rental unit in May 2020. GS submitted that he received a call from the Tenant about moving out on May 12, 2020. The Landlords stated that they do not recall receiving a forwarding address letter from the Tenant.

### Analysis

#### *1. Is the Tenant entitled to \$450.00 for emergency repairs?*

Section 33 of the Act states:

#### **Emergency repairs**

33(1) In this section, "emergency repairs" means repairs that are

- (a) urgent,
- (b) necessary for the health or safety of anyone or for the preservation or use of residential property, and
- (c) made for the purpose of repairing
  - (i) major leaks in pipes or the roof,
  - (ii) damaged or blocked water or sewer pipes or plumbing fixtures,
  - (iii) the primary heating system,
  - (iv) damaged or defective locks that give access to a rental unit,
  - (v) the electrical systems, or
  - (vi) in prescribed circumstances, a rental unit or residential property.

(2) The landlord must post and maintain in a conspicuous place on residential property, or give to a tenant in writing, the name and telephone number of a person the tenant is to contact for emergency repairs.

(3) A tenant may have emergency repairs made only when all of the following conditions are met:

- (a) emergency repairs are needed;
- (b) the tenant has made at least 2 attempts to telephone, at the number provided, the person identified by the landlord as the person to contact for emergency repairs;
- (c) following those attempts, the tenant has given the landlord reasonable time to make the repairs.

(4) A landlord may take over completion of an emergency repair at any time.

(5) A landlord must reimburse a tenant for amounts paid for emergency repairs if the tenant

- (a) claims reimbursement for those amounts from the landlord, and
- (b) gives the landlord a written account of the emergency repairs accompanied by a receipt for each amount claimed.

(6) Subsection (5) does not apply to amounts claimed by a tenant for repairs about which the director, on application, finds that one or more of the following applies:

- (a) the tenant made the repairs before one or more of the conditions in subsection (3) were met;
- (b) the tenant has not provided the account and receipts for the repairs as required under subsection (5)(b);
- (c) the amounts represent more than a reasonable cost for the repairs;
- (d) the emergency repairs are for damage caused primarily by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.

(7) If a landlord does not reimburse a tenant as required under subsection (5), the tenant may deduct the amount from rent or otherwise recover the amount.

In this case, I find GS had attended at the rental unit after receiving the Tenant's call about the sink being clogged. I note the Landlords' position is that they are not responsible for the repair because they believe the Tenant's actions caused the sink to clog.

I find the Tenant does not dispute that she had disposed of vegetables down the sink. I find the plumbing invoice indicates that the repair consisted of taking the drains apart and cleaning them out. I do not find the invoice to have noted any other issues. Furthermore, I find the Tenant did not provide any corroborating evidence to support her claim that there had been black sludge in the pipes. I find the Tenant also did not

explain where the black sludge would have come from or how it would have caused the sink to clog.

Based on the evidence presented, I find on a balance of probabilities that the sink was clogged due to the Tenant disposing of vegetables down the sink. Therefore, I find the Tenant is not entitled to reimbursement for the \$450.00 plumbing invoice pursuant to section 33(6)(d) of the Act. The Tenant's claim under this part is dismissed without leave to re-apply.

*2. Is the Tenant entitled to \$1,400.00 for monetary loss or other money owed?*

In the Tenant's application, the Tenant had stated as follows (portion redacted for privacy):

I REPORTED EXCESSIVE NOISE HARASSMENT TO [GS] - HE BASICALLY TOLD ME I HAD TO HANDLE THE ISSUE MYSELF. THE HARASSMENT ESCALATED + I WAS FILMED IN MY HOME WITHOUT MY KNOWLEDGE OR CONSENT. (SEE ENCLOSED LETTER)

During the hearing, the Tenant confirmed that she was not seeking compensation for noise. I find the Tenant did not clearly indicate whether she was still seeking compensation for invasion of privacy due to an alleged camera in the hole behind the fridge. Under section 28 of the Act, a tenant is entitled to quiet enjoyment of the rental unit including reasonable privacy and freedom from unreasonable disturbance.

I have reviewed the photographs and written statement submitted into evidence by the Tenant. I find the hole appears to be a thumb-sized rectangular cut-out. I find there is insufficient evidence to show that there had been a camera inside the hole. I accept the Landlords' explanation that a small piece on the wall had been cut out to take to the paint store for colour matching paint in the rental unit.

Section 67 of the Act states:

**Director's orders: compensation for damage or loss**

67 Without limiting the general authority in section 62 (3) [*director's authority respecting dispute resolution proceedings*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director

may determine the amount of, and order that party to pay, compensation to the other party.

Since I am unable to find that the Landlords breached section 28 of the Act, I conclude the Tenant is not entitled to compensation from the Landlords under section 67 of the Act. The Tenant's claim under this part is dismissed without leave to re-apply.

*3. Is the Tenant entitled to a return of double the security deposit?*

Section 38(1) of the Act states:

**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.

The Tenant stated that she had left a letter with her forwarding address under the Landlord's doormat on or around April 14, 2020. However, I find the Tenant's evidence regarding the service of this letter to be unclear and somewhat inconsistent. I find the Tenant's application states that the Landlords were served with the forwarding address on April 13, 2020 via registered mail. I also find the Tenant to have indicated that she went to the Landlords' property on two different occasions to pick up cheques. I note the Landlords' evidence is that they would not have returned the Tenant's post-dated cheques before they had confirmation that the Tenant was moving out, which the Landlords did not receive until May 12, 2020. Based on the foregoing, I am doubtful that the Tenant had given her forwarding address in writing to the Landlords on or around April 14, 2020.

Furthermore, I find that leaving a document underneath a doormat would not be an acceptable method of service under section 88 of the Act, which states:

**How to give or serve documents generally**

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 provided for in the regulations.

I note in particular that I do not find placing a document underneath the doormat to qualify as “attaching a copy to a door or other conspicuous place” at the Landlords’ residence, as the document would have been hidden from plain sight.

More importantly, I find the Tenant’s evidence does not include a copy of any forwarding address letter that is said to have been given to the Landlords.

Based on the foregoing, I find there is insufficient evidence for me to conclude that the Tenant had served the Landlords with her forwarding address in writing within one year after the end of the tenancy, that is, on or before May 13, 2021.



Section 39 of the Act states:

**Landlord may retain deposits if forwarding address not provided**

39 Despite any other provision of this Act, if a tenant does not give a landlord a forwarding address in writing within one year after the end of the tenancy,

(a) the landlord may keep the security deposit or the pet damage deposit, or both, and

(b) the right of the tenant to the return of the security deposit or pet damage deposit is extinguished.

I find Tenant's right to the return of the security deposit has been extinguished pursuant to section 39(b) of the Act. The Tenant's claim under this part is therefore dismissed without leave to re-apply.

Conclusion

The Tenant's application is dismissed in its entirety without leave to re-apply.

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: February 15, 2023

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Residential Tenancy Branch