



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

## **DECISION**

Dispute Codes      MNDCT, FFT

### Introduction

The Tenant filed an Application for Dispute Resolution on May 31, 2022 seeking compensation for monetary loss or other money owed, and reimbursement of the Application filing fee.

The matter proceeded by way of a conference call hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the “Act”) on February 13, 2023. In the conference call hearing I explained the process and provided the attending party the opportunity to ask questions.

The Tenant attended the hearing; the Landlord did not attend.

### Preliminary Matter - service of the Notice of Dispute Resolution Proceeding to Landlord

To proceed with this hearing, I must be satisfied that the Tenant made a reasonable attempt to serve the Landlord with the Notice of Dispute Resolution Proceeding for this hearing. This means the Tenant must provide proof that they served the document at a verified address allowed under s. 89 of the *Act*, and I must accept that evidence.

In the hearing, the Tenant described their service of the key document that is the Notice of Dispute Resolution Proceeding to the Landlord at their current address (*i.e.*, the Landlord’s address for service), via registered mail. They provided a tracking number to show this, sent on June 16, 2022, after receiving the Notice of Dispute Resolution Proceeding from the Residential Tenancy Branch on June 13.

The Tenant in the hearing clarified that they provided the same evidence to the Residential Tenancy Branch and the Landlord. The Tenant had no communication separately from the

Tenant about this hearing, though they remain renting from the Landlord at this rental unit property.

I accept the Tenant's evidence that they served the Notice of Dispute Resolution Proceeding, including their evidence, to the Landlord at the Landlord's address for service. This is sufficient for the purposes of the *Act*. Based on the submissions of the Tenant, I accept they served notice of this hearing and their evidence in a manner complying with s. 89(1)(c) of the *Act*, and the hearing proceeded in the Landlord's absence.

### Issues to be Decided

Is the Tenant entitled to compensation for monetary loss/other money owed, pursuant to s. 67 of the *Act*?

Is the Tenant entitled to reimbursement of the Application filing fee, pursuant to s. 72 of the *Act*?

### Background and Evidence

The Tenant did not provide a copy of the tenancy agreement. On their Application, the Tenant indicated the rent amount of \$1,300, for the basement rental unit. They also indicated that they paid a security deposit of \$650. This was for a tenancy that started on July 1, 2021, and ended on November 30, 2021.

The Tenant described renting the whole house for \$3,800 per month from July to November 2021. This was to sublet the basement, while they resided in the upper rental unit, paying \$2,500 per month for that upper rental unit. By December 2021, the Tenant decided to give back the basement rental unit keys to the Landlord, with that basement unit not being suitable for rental. The Tenant submitted proof of needed repairs in the form of pictures showing disrepair.

The Tenant also described the Landlord not wanting to have a documented tenancy agreement for the basement rental unit; therefore, they had a tenancy agreement only for the upper rental unit. In the hearing the Tenant speculated this was for the Landlord's tax purposes, with the Landlord not wanting to claim this kind of income.

The Tenant presented receipts for amounts paid in 2021, each bearing the Tenant's name and address:

- a \$1,900 deposit paid on June 29, 2021; the start of the tenancy \$1,250 + \$650
- \$3,800 rent for July 1, 2021
- \$3,800 paid August 1, 2021, showing "\$2,500 + \$1,300"
- \$3,800 paid September 2, 2021
- \$3,800 paid October 1 2021
- \$3,800 paid November 1 2021

The Tenant presented that the basement rental unit was not suitable for them to sublet to other tenants. On their Application, they stated

The landlord was supposed to make repairs to put the basement in reasonable on since the place needed repairs before it could be occupied. Unfortunately, [the Landlord] did not keep his promises and the unit stayed unoccupiable.

In the hearing, the Tenant presented that they asked the Landlord each month since the start of the tenancy to get the basement ready to rent. The Landlord delayed repairs, and no firm or contractor ever arrived to undertake repairs as needed. By November, there were other issues with the Landlord, meaning "things were not going well" and the Tenant returned the separate keys for the basement rental unit to the Landlord.

The Tenant claims each of the rental amounts \$1,300 for five months, as well as the security deposit \$650, as monetary loss to them.

The Tenant also presented utility invoices for the full amount they paid at the rental unit property, with each bill covering an approximately 6-week billing period:

- bill date August 13, 2021: \$78.99
- bill date October 14, 2021: \$87.37
- bill date December 13, 2021: \$98.97

In the hearing the Tenant presented that the intention was for them to pay one-third of the utility for the lower portion of the rental unit, and two-thirds for the upper portion. On their Monetary Order Worksheet they prepared for this hearing, this is set out as the amounts: \$26.33, \$29.12, and \$32.99 from the invoices set out above.

In the hearing, the Tenant acknowledged the basement rental unit was empty; however, it was still drawing on power consumption with the refrigerator and heat still operating.

In total, the Tenant claims \$7,238.44 as their monetary loss they seek to recover from the Landlord.

### Analysis

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in s. 7 and s. 67 of the *Act*.

To be successful in a claim for compensation for damage or loss the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss; **and**
4. Steps taken, if any, to mitigate the damage or loss.

I find the Landlord and Tenant had a tenancy agreement for part of the rental unit property. I find the Tenant credible on the fact that they were renting the upper portion of the home for \$2,500 per month.

I find as fact the Tenant paid a security deposit total of \$1,900. This is equal to \$1,250 for the upper portion (being one-half of that rent amount of \$2,500) and \$650 for the lower rental unit (being one-half of that rent amount of \$1,300). There was no benefit to the Tenant in exchange for the security deposit. I therefore order the return of the security deposit amount, \$650, in full, to the Tenant as compensation.

The Tenant presented rent receipts. I accept this as evidence they paid \$3,800 per month for each of the months from July through to November 2021. One receipt, for August 2021, makes the separation between \$2,500 and \$1,300. On this basis, in combination with the Tenant's testimony in the hearing, I find the set rent amount for the lower rental unit was \$1,300.

The receipts show that a larger rent amount was paid by the Tenant; therefore, I order the return of the portion extra for each of July through to November 2021. This is \$6,500 in total, as compensation to the Tenant.

The Tenant presented the design was for one-third and two-thirds of the utility amounts between the lower and upper rental units. I find the lower rental unit sat empty; therefore, significant power costs were not incurred for that time. I grant no compensation to the Tenant for these amounts as they claimed; the Tenant did not prove that a loss to them exists.

For the reasons above, I order compensation to the Tenant for \$7,150. The Tenant was successful in this Application; therefore, I add the \$100 Application filing fee to this amount.

### Conclusion

Pursuant to s. 67 and s. 72 of the *Act*, I grant the Tenant a Monetary Order in the amount of \$7,250 for compensation set out above and the recovery of the filing fee for this hearing application. I provide this Monetary Order in the above terms and the Tenant must serve the Monetary Order to the Tenant as soon as possible. Should the Landlord fail to comply with the Monetary Order, the Tenant may file it in the Small Claims Division of the Provincial Court where it will be 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 s. 9.1(1) of the *Act*.

Dated: March 1, 2023

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Residential Tenancy Branch