



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      Landlord: MNR MND MNDC MNSD FF  
Tenant: MNSD

### Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties. The participatory hearing was held, via teleconference, on November 21, 2023.

Both parties attended the hearing and provided affirmed testimony.

The Tenant confirmed receipt of the Landlord's Notice of Dispute Resolution Proceeding. However, the Landlord stated he did not serve his evidence to the Tenant. As it was not served to the Tenant, without any compelling reason, I find it is not admissible, since it has not been sufficiently served in accordance with the Act and the Rules.

The Landlord confirmed receipt of the Tenants Notice of Dispute Resolution Proceeding. The Landlord also confirmed receipt of some of the Tenant's evidence, and although he did not receive all of the evidence from the Tenant, he stated he was okay with allowing all of the Tenant's evidence to be admitted for this proceeding.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence submitted in accordance with the rules of procedure, and evidence that is relevant to the issues and findings in this matter are described in this Decision.

### Issue(s) to be Decided

*Tenant*

- Is the Tenant entitled to the return of double the security deposit held by the Landlord?

*Landlord*

- Is the Landlord entitled to a monetary order for damage to the rental unit, for damage or loss under the Act or for rental losses?
- Is the Landlord entitled to keep the security deposit to offset the amounts owed by the Tenant?

Background and Evidence

Both parties agree that:

- monthly rent was \$1,650.00 and was due on the first of the month.
- The tenancy started on December 1, 2022, and ended ten days later, on or around December 11, 2022, the day the Tenant vacated the rental unit.
- As per the tenancy agreement provided into evidence, the tenancy was set to be a fixed term lease ending December 31, 2023.
- The Landlord still holds a security deposit in the amount of \$850.00.
- The Tenant provided, and the Landlord received, the Tenant's forwarding address in writing on February 20, 2023.

The Landlords filed their application against the deposit on March 13, 2023. Also, the Landlord confirmed that no move-in or move-out inspection had been completed, and they did not complete an inspection report. The Landlord pointed out that his agent did not complete a move-in inspection right at the start of the tenancy, and matters were complicated by the fact that he was out of town, and there were some flooding issues that impeded planning.

*General background*

The tenancy only lasted 10 days. The Tenant explained that on December 4, 2022, the shower handle came off and the shower stopped working at that time. Then, in the days that followed, the toilet started leaking, there was a separate water leak that cause water to leak upwards from the floor into the rental unit, and after several visits from plumbers, and agents of the Landlord, the Tenant told the Landlord on December 9<sup>th</sup> that he would be moved out by Sunday the 11<sup>th</sup>, given what had happened.

### *Tenants' Application*

The Tenant has applied for the return of his security deposit, or double, since he was never given the deposit back, despite giving his forwarding address. The Tenant does not feel he owes any money to the Landlord, given none of the water issues, or other issues with the rental unit, were his fault. The Tenant felt he was entitled to move out and end the tenancy early because there were several issues with the rental unit: shower handle broke off in the first few days, the toilet started leaking, there was a water leak in the strata complex that infiltrated the unit, there was no smoke alarm battery, and there was other evidence of past water issues around the washing machine.

### *Landlord's Application*

The Landlord filed an application which shows they are seeking the following items:

- 1) \$1,650.00 – Rental loss for January 2023

The Landlord stated that he is seeking January rent because the unit was empty for this time, and no rent was paid. The Landlord stated he was able to re-rent for February 2023, but not for January.

The Tenant does not feel he should have to pay for this because of all the issues.

- 2) \$356.85 – Shower repairs

The Landlord stated that this is what it cost to repair the shower the broke while the Tenant was living in the unit.

The Tenant asserts that the shower handle that fell off was “rotted out” and old and he was simply using it normally, and it separated from the wall. The Landlord denies that the fixture was rotted out.

- 3) \$482.73 – Strata move-in fee of \$200, parking fee 2x\$80.00, BC Hydro bill Dec/Jan for \$122.73

The Landlord stated that the strata charged him \$200.00 for the Tenant's move-in, and the Tenant never paid this amount. The Landlord also stated that the Tenant never paid

his parking fees of \$80.00 per month (for December or January), and the Landlord also stated that the Tenant failed to pay for the electricity bill for December and January.

The Tenant does not feel he should have to pay for electricity that was consumed while renovations were being completed after he moved out, since they were not his fault.

### Analysis

A party that makes an application for monetary compensation against another party has the burden to prove their claim.

The applicant bears the burden of proof to prove the existence of the damage/loss and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the other party. Once that has been established, the applicant must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the applicant did everything possible to minimize the damage or losses that were incurred.

When two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making the claim has the burden to provide sufficient evidence over and above their testimony to establish their claim.

### *Tenants' Application*

Section 38(1) of the *Act* requires a landlord to repay the security deposit or make an application for dispute resolution within 15 days after receipt of a tenant's forwarding address in writing or the end of the tenancy, whichever is later. When a landlord fails to do one of these two things, section 38(6) of the *Act* confirms the tenant is entitled to the return of double the security deposit.

I note there was no move-in or move-out condition inspection done, and there was no condition inspection report completed by the Landlord. I find this is a breach of section 24(2)(c) of the *Act*, which means the Landlord's right to claim against the deposit for damage is extinguished. However, I note this application against the deposit was also for rent, which means extinguishment does not apply.

In this case, the Landlord confirmed he received the Tenants' forwarding address in writing on February 20, 2023. Also, I find the tenancy ended on December 11, 2022, the day the Tenant vacated the unit.

Therefore, the Landlord had 15 days after he received the forwarding address in writing, until March 7, 2023, to either repay the security deposit to the Tenant or make a claim against it by filing an application for dispute resolution for a matter not related to damage. The Landlords filed their application on March 13, 2023, which was not within the allowable time frame. Accordingly, I find the Tenant is entitled to recover double the amount of the security deposit held by the Landlord ( $2 \times \$825.00 = \$1,650.00$ ) pursuant to section 38(6) of the *Act*. The Landlord also owes the Tenant interest on the deposit, but only on the original amount. Interest payable is \$14.34.

Further, I award the recovery of the Tenants filing fee paid, \$100.00. So, the Landlord owes the Tenant \$1,764.34 for this part of the claim.

### *Landlord's Application*

Next, I turn to the Landlord's claim for monetary compensation.

#### 1) \$1,650.00 – Rental loss for January 2023

I note the following relevant portions of the **Policy Guideline #5 – Duty to Minimize Loss**:

This duty is commonly known in the law as the duty to mitigate. This means that the victim of the breach must take reasonable steps to keep the loss as low as reasonably possible. The applicant will not be entitled to recover compensation for loss that could reasonably have been avoided.

Efforts to minimize the loss must be "reasonable" in the circumstances. What is reasonable may vary depending on such factors as where the rental unit or site is located and the nature of the rental unit or site. The party who suffers the loss need not do everything possible to minimize the loss, or incur excessive costs in the process of mitigation.

I accept that the Tenant moved out suddenly and only paid rent for December 2022. I note the Landlord did not collect any rent for January 2023. However, I find the Landlord failed to sufficiently demonstrate that he mitigated his losses on this matter. He did not explain when he reposted the ad for the rental unit, and for what amount, such that I could be satisfied he reasonably mitigated his lost rent for January. I hereby dismiss this item, in full.

#### 2) \$356.85 – Shower repairs

The Landlord has no admissible documentary evidence to demonstrate the value of the loss on this matter or provide any receipts. I do not find the Landlord has met the burden of proof on this matter. I dismiss this item, in full.

- 3) \$482.73 – Strata move-in fee of \$200, parking fee 2x\$80.00, BC Hydro bill Dec/Jan for \$122.73

I note the Tenant does not refute that he failed to pay the strata move-in fee of \$200.00. Further, the Tenant did not refute that he failed to pay the parking fee, which is set up in the tenancy agreement as \$80.00 on top of monthly base rent. I hereby award the \$200.00 for the move-in fee, as well as \$80.00 for parking for the month of December. However, given the lack of evidence regarding mitigating the Landlord's losses for January, I decline to award parking fees for that month. With respect to the BC Hydro bill, I find there is no admissible copy of the bills, and I do not find the Landlord has sufficiently demonstrated and substantiated the value of the loss on this item. I dismiss his claim for utility bills.

As the Landlord was partly successful, I award \$100.00 for the cost of his filing fee.

The Tenants are entitled to \$1,764.34. The Landlord is entitled to \$380.00. After offsetting these amounts, the Tenant is entitled to a monetary order in the amount of \$1,384.34.

### Conclusion

I grant the Tenant a monetary order in the amount of \$1,384.34. This order must be served on the Landlord. If the Landlord fails to comply with this order the Tenant may file the order in the Provincial Court (Small Claims) and 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 Section 9.1(1) of the *Residential Tenancy Act*.

Dated: November 30, 2023