



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Dispute Codes:**

MNSD, MND, MNR, MNDC, FF

### **Introduction**

This hearing was convened in response to cross-applications by the parties for dispute resolution.

The tenant filed on August 15, 2013 pursuant to the *Residential Tenancy Act* (the Act) for Orders as follows:

1. An Order for the return of the security deposit - Section 38

The landlord filed on August 21, 2013, 2013 pursuant to the *Residential Tenancy Act* (the Act) for Orders as follows, as orally amended in the hearing by the landlord:

1. A Monetary Order for damages – Section 67
2. A Monetary Order for loss – Section 67
3. An Order to retain the security deposit - Section 38
4. An Order to recover the filing fee for this application (\$50) - Section 72.

Both parties participated in the hearing with their submissions, document evidence and testimony during the hearing. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

### **Issue(s) to be Decided**

Is the tenant entitled to the monetary amounts claimed?  
Is the landlord entitled to the monetary amounts claimed?

The burden of proof rests with the party making the claim.

## **Background and Evidence**

The tenancy agreement states that the tenancy began August 01, 2012 as a fixed term tenancy ending July 31, 2013. The payable monthly rent was in the amount of \$1650.00. The parties agree that their respective understanding of the tenancy agreement and what they agreed at the outset of the tenancy was that the tenancy could continue on a month to month basis or that they could sign a new tenancy agreement. However, the parties failed to arrive at agreement respecting a new agreement and the tenant moved out. The tenancy ended August 01, 2013 pursuant to a text message communication from the tenant on August 21, 2013, and one other text message event several weeks before. As the parties did not arrive at agreement on a new tenancy, the landlord claims the tenant did not provide them with Notice to End the tenancy in accordance with the Act and is therefore claiming loss of rent revenue for August 2013: \$1650.00.

At the outset of the tenancy the landlord collected a security deposit in the amount of \$825.00 - which the landlord still holds in trust. During the tenancy rent in the amount of \$1650.00 was payable in advance on the first day of each month. At the beginning of the tenancy the parties conducted a mutual move-in inspection and at the end of the tenancy the parties conducted a mutual move-out inspection – both of which were purportedly recorded on a condition inspection report (CIR); however, neither party submitted a copy of either CIR. The tenant agrees that the parties conducted the required inspections, however they dispute the landlord's claims that the damage claimed by the landlord was identified in the CIR, or that they damaged the rental unit during their tenancy.

The landlord testified that at the end of the tenancy the claimed CIR reflected that deficiencies were noted and recorded, however, the landlord is not claiming compensation for all deficiencies which they claim were noted. The landlord's sole claims are for the cost of repairs to ceiling damage in the amount of an estimate of \$450.00 and purported damage to carpeting which they claim would require \$300.00 to repair. The landlord provided a series of photographs depicting the claimed damages. The tenant disputes the landlord's claims, stating that the only issue with the ceilings were 2 small holes which were addressed by small amounts of plaster, and that the markings on the carpeting, which the landlord claims as damage, were there at the outset of the tenancy.

The tenant claims the return of the security deposit. They testified that they did not provide the landlord with their forwarding address until they filed their application for dispute resolution.

## **Analysis**

On preponderance of the document evidence submitted and the testimony of the parties, I find as follows:

If a claim is made by the landlord for damages to property, the normal measure of damage is the cost of repairs or replacement with allowance for depreciation or wear and tear. It must further be emphasized that the landlord must provide sufficient evidence that the costs for which they claim compensation are for conditions beyond reasonable wear and tear, and are the result of the conduct or neglect of the tenant.

In this matter, I find the onus is on the landlord to prove their claim the tenant is responsible for the damages. The tenant disputes they caused any damage to the rental unit. Despite the landlord's testimony and document evidence, it was available to the landlord to provide proof of the condition of the rental unit at the start and end of the tenancy, but they did not. In this matter, the requisite condition inspection reports, administered in accordance with the Act, would have held evidentiary weight respecting the condition of the rental unit at the start and end of the tenancy. I find the landlord has not provided sufficient evidence to support their claim the tenant damaged the rental unit.

I find that as the parties contracted for the tenancy to effectively continue as a month to month tenancy at the end of the fixed term, and in the absence of the parties arriving at a new tenancy agreement, the tenant was obligated to provide the landlord with a Notice to End the tenancy in accordance with the provisions of Section 45 of the Act. I find the tenant failed to do so and the landlord was left with a text message on July 21, 2013 that the tenant was vacating August 01, 2013. The Act does not automatically require a tenant to pay one month's rent if they do not provide notice to end the tenancy in accordance with the Act. However, Section 7 of the Act states that if the landlord suffers a loss as a result of the tenant's non-compliance with the Act they may make a claim for that loss, provided they demonstrate they made a reasonable effort to mitigate the loss. In this matter I find the landlord has not provided any evidence they made efforts to mitigate losses of revenue following the end of the tenancy. None the less, I accept that, at the latest, the landlord was obligated to advertise availability of the rental unit for August 15, 2013. As a result, I accept the landlord is owed one half month's rent revenue in the amount of \$825.00. The landlord is further entitled to recover costs of **\$50** for filing this application for a total award of **\$875.00**.

I find the tenant is not entitled to double the security deposit as they do not meet the conditions prescribed by Section 38(1) of the Act. I accept the tenant's application simply seeks return of their original security deposit and effectively is a rebuttal to the landlord's claims. As the landlord's award exceeds the tenant's claim respective claims are offset as follows.

***Calculation for Monetary Order***

Landlord's award for loss or revenue	\$825.00
Filing fee	50.00
<i>minus security deposit held</i>	<i>-\$825.00</i>
<b>Total monetary award for landlord</b>	<b>\$50.00</b>

**Conclusion**

The tenant's application effectively is dismissed, without leave to reapply.

**I Order** that the landlord retain the security deposit of \$825.00 in partial satisfaction of their award and I grant the landlord an Order under Section 67 of the Act for the balance due of **\$50.00**. If necessary, this order may be filed in the Small Claims Court and enforced as an order of that Court.

**This Decision is final and binding on both parties.**

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 18, 2013

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Residential Tenancy Branch

