



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNR, MNSD, FF, O

### Introduction

This hearing dealt with applications from both the landlord and the tenant under the *Residential Tenancy Act* (the *Act*). The landlord applied for:

- a monetary order for unpaid rent pursuant to section 67;
- authorization to retain all of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38;
- authorization to recover his filing fee for this application from the tenant pursuant to section 72; and
- other remedies, identified in his application as a monetary award for damage, repairs and cleaning arising out of this tenancy.

The tenant applied for:

- authorization to obtain a return of double her security deposit pursuant to section 38; and
- authorization to recover her filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. The landlord's agent (the agent) confirmed that the landlord received a copy of the tenant's dispute resolution hearing package that the tenant sent on February 18, 2014. I am satisfied that the landlord was served with this package in accordance with section 89 of the *Act*.

The landlord entered written evidence and the agent gave sworn testimony that the landlord sent the tenant a copy of his dispute resolution hearing package and written and photographic evidence by registered mail on March 27, 2014. The landlord entered into written evidence a copy of the Canada Post Customer Receipt, including the Tracking Number, and a copy of the envelope returned to him by Canada Post as "No such person here." The agent testified that the landlords sent this envelope and hearing package to the tenant at the address she provided in her application for dispute resolution. He gave sworn testimony that the landlord did not receive the tenant's

forwarding address until he received the tenant's dispute resolution hearing package in mid-March 2014. The tenant testified that she had not received the landlord's dispute resolution hearing package and had not received any notification from Canada Post that there was registered mail ready for her to pick up at the postal station. I find that the landlord correctly sent a copy of his hearing package to the address the tenant provided in her application for dispute resolution. In accordance with sections 89(1) and 90 of the *Act*, I find that the tenant was deemed served with the landlord's dispute resolution hearing package on April 1, 2014, the fifth day after its registered mailing.

Near the end of this hearing, it became apparent that someone other than the tenant and her son who was translating for her, had joined the tenant and was attempting to enter evidence to be considered during this hearing. This individual, identified as the tenant's husband and the co-tenant on the fixed term tenancy agreement, subsequently gave sworn testimony as a witness in these proceedings.

#### Issues(s) to be Decided

Is the landlord entitled to a monetary award for unpaid rent and for damage arising out of this tenancy? Which of the parties is entitled to the tenant's security deposit? Is the tenant entitled to a monetary award equivalent to double the value of her security deposit as a result of the landlord's failure to comply with the provisions of section 38 of the *Act*? Are either of the parties entitled to recover their filing fees from one another?

#### Background and Evidence

This two-year fixed term tenancy commencing on October 14, 2012 was scheduled to end on October 31, 2014. Monthly rent was set at \$1,680.00, payable in advance on the first of each month. The landlord continues to hold the tenant's \$840.00 security deposit paid on November 1, 2012.

Although it appears that a joint move-in inspection was conducted at the beginning of this tenancy, the landlord did not prepare a report of that inspection. The tenant abandoned this rental unit, leaving the keys inside the rental unit. While the landlord inspected the rental unit after the tenancy ended, he did not prepare a move-out condition inspection report. He submitted a number of photographs showing the condition of the rental unit at the end of this tenancy.

The tenant testified that on or about January 18, 2014, she mailed the landlord a written notice that she was planning to end her tenancy and vacate the rental unit by January 25, 2014. The landlord submitted written evidence that he did not receive any notification that the tenant was planning to end her tenancy early. When the tenant did not pay her rent for February 2014, the landlord tried to contact the tenant with no

success. After attempting several times to contact the tenant, the landlord gained access to the rental unit in February 2014, when it became apparent that the tenant was no longer residing there. The agent said that the landlord had to access the rental unit through another rental unit in the property.

The tenant's February 18, 2014 application for a monetary award of \$1,971.00 included a request for a return of double her security deposit for the landlord's alleged failure to return her security deposit within 15 days of the end of her tenancy or the date when she provided her forwarding address to the landlord. The tenant's requested monetary award also included \$271.00, for the last five days of her tenancy.

The landlord's application for a monetary award of \$15,282.86 included a request for the remaining nine months of this fixed term tenancy agreement ( $\$1,680.00 \times 9 \text{ months} = \$15,120.00$ ). The landlord's application also included \$262.50 for repairs to the living room door, \$56.36 for deadbolts, \$84.00 to install the deadbolts, \$180.00 for cleaning; and \$420.00 for garbage removal. The above amounts of the landlord's claim totalling \$16,122.86 was reduced by the retained security deposit of \$840.00 to result in the total monetary claim of \$15,282.86.

### Analysis

Section 7(1) of the *Act* establishes that a tenant who does not comply with the *Act*, the regulations or the tenancy agreement must compensate the landlord for damage or loss that results from that failure to comply.

I find that the tenant was in breach of her fixed term tenancy agreement because she vacated the rental premises prior to the October 31, 2014 date specified in that agreement. I also note that section 45(1) of the *Act* requires that even in a month-to-month (periodic) tenancy a tenant must give the landlord notice to end the tenancy the day before the day in the month when rent is due. In this case, in order to avoid any responsibility for rent for February 2014, the tenant would have needed to provide her notice to end this tenancy before January 1, 2014. Section 52 of the *Act* requires that a tenant provide this notice in writing.

In this case, I find that the tenant has not supplied a copy of her written notice to end this tenancy. I also find the tenant has not supplied adequate evidence to demonstrate that she complied with the requirement under section 52 of the *Act* to provide the landlord with written notice of her intention to end this tenancy. As such, the landlord is entitled to compensation for losses he incurred as a result of the tenant's failure to comply with the terms of their tenancy agreement and the *Act*.

There is undisputed evidence that the tenant did not pay any rent for February 2014. However, section 7(2) of the *Act* places a responsibility on a landlord claiming compensation for loss resulting from a tenant's non-compliance with the *Act* to do whatever is reasonable to minimize that loss.

Under these circumstances, I find that the landlord was uncertain as to whether the tenant had actually vacated the rental unit in February 2014, and the tenant did not actually return the keys to the landlord or his representative. For these reasons, I find that the landlord was in no position to try to re-rent the premises to someone else for February 2014, due to the tenant's failure to properly notify the landlord in writing of her intention to end this fixed term tenancy early and to leave the premises reasonably clean. I issue a monetary award in the landlord's favour in the amount of \$1,680.00 for unpaid rent owing for February 2014.

By some time in February 2014, the landlord realized that the tenant had vacated the rental unit and had taken possession of that rental unit. The agent testified that the tenant left many items behind and did not clean the rental unit at the end of this tenancy. The agent testified that the process of cleaning the rental unit and removing items from the rental unit was not completed until approximately two weeks before this hearing, by early April 2014. However, the receipts supplied by the landlord from a renovation construction company show that the deadbolts were changed on February 5, 2014, the garbage was removed on February 22, 2014, and the cleaning receipt was dated February 23, 2014. Under these circumstances, I find that the premises were ready to be re-rented by at least March 1, 2014. The agent testified that he was not sure when or if the landlord had attempted to re-rent the premises or if the landlord has been successful in re-renting the premises.

Based on the agent's testimony and the lack of written evidence from the landlord to demonstrate an attempt to re-rent these premises, I find little evidence that the landlord has satisfied the requirement under section 7(2) of the *Act* to mitigate losses for unpaid rent owing for March 2014. As the landlord has not met this duty to minimize the tenant's losses, I dismiss the landlord's application for a monetary award for any months other than February 2014.

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has

been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. In this case, the onus is on the landlord to prove on the balance of probabilities that the tenant caused the damage and that it was beyond reasonable wear and tear that could be expected for a rental unit of this age.

I first note that the *Act* places the responsibility on the landlord to bear the costs of replacing locks at the end of a tenancy in preparation for occupancy by a new tenant. For this reason, and as the landlord did have keys to access the rental unit at the end of this tenancy, I dismiss the landlord's application to obtain a monetary award for the replacement of the deadbolt and the keys without leave to reapply.

When disputes arise as to the changes in condition between the start and end of a tenancy, joint move-in condition inspections and inspection reports are very helpful. In this case, the landlord, responsible for preparing these reports, has not prepared either a joint move-in condition inspection report or a move-out condition report at the end of this tenancy. Under these circumstances, it is difficult to determine the extent to which any damage present at the end of this tenancy arose during the course of this tenancy. I dismiss the landlord's application for a monetary award for damage to the living room door without leave to reapply as it is unclear if this damage occurred during this tenancy.

Section 37(2) of the *Act* requires a tenant to "leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear." Based on the landlord's undisputed photographic evidence included with his hearing package, I accept that the tenant left many items behind at the end of this tenancy and did not conduct a proper cleaning before the rental unit was surrendered to the landlord. In this regard, I reject the claim made by the co-tenant that the landlord did not give the tenant(s) a proper opportunity to clean the rental unit at the end of this tenancy. By the time that the landlord was refusing access to the rental unit, the tenant had yielded possession of the rental unit, which she claimed occurred on January 25, 2014. As her tenancy had ended, the tenant would not be given a further chance to clean up the premises or remove materials that she left behind at the end of her tenancy. For these reasons, I find the landlord is entitled to a monetary award in the amount of \$180.00 for general cleaning and \$420.00 for the removal of items left behind at the end of this tenancy.

#### Analysis - Tenant's Application

I dismiss the tenant's application for a monetary award for the final five days in January 2014 without leave to reapply, as she has no right to claim for a recovery of any rent she paid for January 2014.

Section 38(1) of the *Act* requires a landlord, within 15 days of the end of the tenancy or the date on which the landlord receives the tenant's forwarding address in writing, to either return the security deposit or file an Application for Dispute Resolution seeking an Order allowing the landlord to retain the security deposit. If the landlord fails to comply with section 38(1), then the landlord may not make a claim against the deposit, and the landlord must return the tenant's security deposit plus applicable interest and must pay the tenant a monetary award equivalent to the original value of the security deposit (section 38(6) of the *Act*). With respect to the return of the security deposit, the triggering event is the latter of the end of the tenancy or the tenant's provision of the forwarding address.

In this case, the tenant did not provide a copy of her alleged letter notifying the landlord of her intention to end this tenancy early, nor did she provide a copy of her provision of her forwarding address in writing to the landlord. Therefore the landlord's obligations to return the tenant's security deposit had not yet been triggered by the time the landlord applied for dispute resolution. Although the tenant is entitled to obtain a return of her security deposit, I find that she is not entitled to a doubling of that deposit, as she did not provide evidence to demonstrate her provision of her forwarding address in writing to the landlord.

As both parties were partially successful in their applications, I make no order with respect to the filing fees. Each party is responsible for their own filing fees for their applications.

### Conclusion

I issue a monetary Order in the landlord's favour under the following terms, which allows the landlord to recover unpaid rent and damage arising out of this tenancy, and to retain the tenant's security deposit:

Item	Amount
Unpaid February 2014 Rent	\$1,680.00
Cleaning	180.00
Garbage Removal	420.00
Less Security Deposit	-840.00
<b>Total Monetary Order</b>	<b>\$1,440.00</b>

The landlord is provided with these Orders in the above terms and the tenant must be served with this Order as soon as possible. Should the tenant fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders 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: April 22, 2014

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Residential Tenancy Branch

