



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes MNDC MNSD FF

### Introduction

This hearing was convened as a result of the tenant's application for dispute resolution seeking remedy under the *Residential Tenancy Act* (the "*Act*"). The tenant applied for the return of double her security deposit, for money owed or compensation for damage or loss under the *Act*, plus the recovery of the cost of the filing fee.

The tenant, an articling student representing the tenant (the "articling student"), the landlord and a witness for the landlord appeared at the teleconference. The tenant and the landlord gave affirmed testimony. During the hearing the parties presented their evidence. A summary of the evidence is provided below and includes only that which is relevant to the hearing.

The tenant confirmed receiving and reviewing the landlord's evidence prior to the hearing. The landlord stated that she did not receive the landlord's Application and documentary evidence until July 31, 2016 under her door. The tenant provided a registered mail tracking number in evidence that confirms that I find supports that the tenant served the landlord by registered mail on January 6, 2016 and that the registered mail package was unclaimed and returned to the sender. Pursuant to section 90 of the *Act* I find the landlord was deemed served five days after the registered mail package was mailed to the landlord which would be January 11, 2016.

### Preliminary and Procedural Matters

At the outset of the hearing the landlord claimed to be a roommate and was advised that the matter had already been considered and a decision rendered in a previous decision dated November 12, 2015, the file number of which has been included on the cover page of this decision (the "previous decision"). In the previous decision the arbitrator found that landlord meets the definition of landlord that is provided under the *Act*.

During the hearing, the parties agreed that the tenants paid a security deposit of \$325.00 and not \$320.00 as noted in the tenant's Application. As a result I have determined that the tenant's Application should have read \$325.00 and not \$320.00 in terms of the claim for the return of her security deposit.

### Issues to be Decided

- Is the tenant entitled to the return of double her security deposit under the *Act*?
- If the tenant is entitled to monetary compensation under the *Act*, in what amount?

### Background and Evidence

The parties agreed that a month to month tenancy began on May 30, 2015 and ended on October 10, 2015 when the tenant vacated the rental unit. Monthly rent of \$650.00 was due on the first day of each month. A security deposit of \$325.00 was paid by the tenant, which the landlord continues to hold. The parties did not have a written tenancy agreement. The parties agreed that the monthly rent included heat and hydro, but the parties disputed whether internet was included in the tenancy.

The tenant has claimed \$1,211.00 which should have read \$1,221.00 as follows:

ITEM DESCRIPTION	AMOUNT CLAIMED
1. Unreasonable noise from June 2015 to October 10, 2015	\$250.00
2. Failure to provide access to kitchen from mid-August 2015 to October 10, 2015	\$187.50
3. Double return of security deposit (\$325.00 X 2)	\$650.00
4. Disconnection of internet in October 2015	\$21.00
5. Failure to provide adequate heat between September 1, 2014 and October 10, 2015	\$62.50
6. Filing fee	\$50.00
<b>TOTAL</b>	<b>\$1,221.00</b>

Regarding item 1, as the tenant failed to submit her claim until December 30, 2016 this portion of her claim was dismissed during the hearing as I find that the tenant failed to comply with section 7 of the Act which requires that a person who is claiming for compensation to do what is reasonable to minimize the damage or loss.

Regarding item 2, the tenant has claimed \$187.50 for loss of the use of the kitchen due to what the tenant describes as being uncomfortable due to the landlord cleaning the gas stove and mopping the floor while she was in the kitchen. As the tenant was unable to provide specific details regarding dates of when she felt uncomfortable and why, this portion of the tenant's claim was dismissed during the hearing due to insufficient evidence.

Regarding item 3, in the previous decision referred to above, the arbitrator writes as follows:

**"...Therefore, during the hearing, I put the landlord on notice that she is considered to be in receipt of the tenant's forwarding address, in writing, as of this date, and must take action to dispose of the security deposit in a manner that complies with the Act..."**

[reproduced as written]

As the previous decision was dated November 12, 2015 and was based on a hearing of the same date, the landlord had the tenant's written forwarding address as of November 12, 2015. The landlord testified that she did not return the tenant's security deposit. In addition, the parties confirmed that the landlord did not request an incoming condition inspection report at the start of the tenancy.

Regarding item 4, the tenant has claimed \$21.00 related to the disconnection of the internet which was a disputed service of the verbal tenancy formed between the parties. The parties were advised that in future all tenancy agreements must be in writing as required by section 13 of the Act.

Regarding item 5, the tenant has claimed \$62.50 due to the landlord's alleged inadequate heat between September 1, 2014 and October 10, 2015. When asked about this portion of the tenant's claim, the tenant testified that heat became an issue on September 30, 2015. As this is inconsistent with the dates claimed, this item was dismissed during the hearing due to insufficient evidence.

### Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on the balance of probabilities, I find the following.

#### Test for damages or loss

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 sections 7 and 67 of the *Act*. Accordingly, an applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did what was reasonable to minimize the damage or loss.

In this instance, the burden of proof is on the tenant 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 landlord. Once that has been established, the tenant must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the tenant did what was reasonable to minimize the damage or losses that were incurred.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

Regarding item 1 and as mentioned above, this portion of the tenant's claim was dismissed during the hearing as I find the tenant failed to comply with section 7 of the which requires that a person who is claiming for compensation to do what is reasonable to minimize the damage or loss. Therefore, I find the tenant has failed to meet the burden of proof as described above.

Regarding item 2 and as mentioned above, this portion of the tenant's claim was dismissed without leave to reapply due to insufficient evidence. I find the tenant has failed to meet the burden of proof as described above as the tenant was unable to provide specific details such as the dates when she alleges we could not use the kitchen.

Regarding item 3, the landlord was found to have been served with the tenant's written forwarding address as of November 12, 2015. The landlord testified that she did not return the tenant's security deposit. In addition, I find the landlord extinguished any right to claim against the tenant's security deposit pursuant to section 24 of the *Act* as the landlord failed to complete an incoming condition inspection report at the start of the tenancy. Therefore, section 38 of the *Act* applies which 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.**

**(6) If a landlord does not comply with subsection (1), the landlord**

**(a) may not make a claim against the security deposit or any pet damage deposit, and**

**(b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.**

[my emphasis added]

In the matter before me, I find that the landlord breached section 38 of the *Act* by failing to return the security deposit in full to the tenant within 15 days of receiving the forwarding address of the tenant in writing on November 12, 2015 as noted in the previous decision. Therefore, I find the tenant is entitled to the return of double the original security deposit of \$325.00 for a total of **\$650.00**. I note that the tenant's security deposit accrued \$0.00 in interest since the start of the tenancy.

Regarding item 4, the tenant has claimed \$21.00 related to the disconnection of the internet which was a disputed service of the verbal tenancy formed between the parties. As the tenant has the onus of proof in proving her claim, I find that there is insufficient evidence before me to support that internet was included in the tenancy agreement formed by the parties due to the disputed verbal testimony. Given the above, I find the tenant has failed to meet the burden of proof as described above and dismiss this portion of the tenant's claim as a result.

**I ORDER** the landlord to comply with section 13 of the *Act* in the future which requires that all tenancy agreements be in writing.

Regarding item 5, the tenant has claimed \$62.50 due to the landlord's alleged inadequate heat between September 1, 2014 and October 10, 2015. As mentioned above, I dismiss this portion of the tenant's claim due to inconsistent testimony that conflicts with the dates as claimed in her application. I find the tenant has failed to meet the burden of proof for this portion of her claim as a result and has provided insufficient evidence.

As the tenant's application had some merit, I grant the tenant the recovery of one-half of the cost of their filing fee in the amount of **\$25.00**.

**Monetary Order** – I find that the tenant has established a total monetary claim in the amount of **\$675.00**, comprised of \$650.00 for the doubled security deposit, plus recovery of \$25.00 of the cost of the filing fee. I grant the tenants monetary order pursuant to section 67 of the *Act* in the amount of \$675.00.

Conclusion

A portion of the tenant's application is successful. The tenant has established a total monetary claim of \$675.00 comprised of the return of double their security deposit in the amount of \$650.00, plus recovery of \$25.00 of the cost of the filing fee. The tenant has been granted a monetary order under section 67 of the *Act* in the amount of \$825.00. This order must be served on the landlord and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: August 18, 2016

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Residential Tenancy Branch