



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNDCT, MNSD, FFT

### Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- a monetary order for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("Regulation") or tenancy agreement pursuant to section 67;
- authorization to obtain a return of all or a portion of the security deposit pursuant to section 38; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

The tenant and the landlord attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The landlord confirmed that he had received the tenant's application and evidence. As the landlord did not raise any issues regarding service of the application or evidence I find that the landlord was duly served with these documents in accordance with sections 88 and 89 of the *Act*.

### Preliminary Issue – Landlord's Evidence

Pursuant to Rule 3.15 of the Residential Tenancy Branch ("RTB") Rules of Procedure, a respondent must ensure evidence that the respondent intends to rely on at the hearing is served on the applicant and submitted to the Residential Tenancy Branch. At the outset of the hearing, the landlord testified that he served the tenant with a receipt that summarized his evidence. From reading the instructions on the RTB website, he understood this was all he was required to send. The tenant confirmed receipt of a receipt summarizing the landlord's evidence.

In this case, I find the landlord misunderstood his obligations in serving evidence. The Notice of Hearing which formed part of the tenant's application provides information and relevant links to serving evidence. Serving a summarized list of the evidence to the

other party is not sufficient for the purposes of the *Act*. Because the landlord did not serve his evidence but rather served only a receipt to the tenant, I have not relied on it to form any part of my decision.

#### Issue(s) to be Decided

Is the tenant entitled to a monetary order for compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement?

Is the tenant authorized to obtain a return of all or a portion of the security deposit?

Is the tenant authorized to recover the filing fee for this application from the landlord?

#### Background and Evidence

As per the submitted tenancy agreement and testimony of the parties, the tenancy began on June 1, 2014 on a month-to-month basis. Rent in the amount of \$1,350.00 was payable on the first of each month. The tenant remitted a security deposit in the amount of \$600.00 at the start of the tenancy, which the landlord still retains in trust.

The tenant vacated the unit February 24, 2018 and now seeks to recover rent and utilities paid for the last 4 days in which he did not occupy the unit. It is the tenant's position that because the landlord's painters began working in the unit February 24, 2018, he should be entitled to compensation in the amount of \$225.00 (\$192.86 rent + \$32.00 utilities). The tenant testified that he provided his forwarding address in writing to the landlord sometime between February 24 and 28, 2018. The tenant seeks the return of his security deposit in the amount of \$600.00. The tenant also seeks to recover the \$100.00 filing fee paid for the application.

In reply, the landlord acknowledged that the painters began working February 24, 2018 however it is the landlord's position that the tenant vacated the unit early on February 24, 2018 at his own will. In regards to the security deposit, the landlord testified that it was withheld because after the tenancy ended, the landlord incurred a plumbing cost he attributed to the actions of the tenant. The landlord testified that he did not receive the tenant's forwarding address in writing until such time that he received the tenant's application for this hearing.

#### Analysis

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 this case, the onus is on the tenant to prove, on a balance of probabilities, the following four elements:

1. Proof that the damage or loss exists;
2. Proof that the damage or loss occurred due to the actions or neglect of the landlord in violation of the *Act*, *Regulation* or tenancy agreement;
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
4. Proof that the tenants followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

Based on the documentary evidence and testimony of the parties I am satisfied that the tenant vacated the unit early, on his own accord. In doing so I find the tenant knew or ought to have known that rent paid for the remaining period and any utility charges incurred during this period would be borne by him. I find the tenant has failed to establish the claimed loss was due to the actions or neglect of the landlord. For this reason, I dismiss this portion of the tenant's claim without leave to reapply.

Section 38 of the *Act* establishes that a landlord has fifteen days from the later of the date the tenancy ends or the date the landlord receives the tenant's forwarding address in writing to file an arbitration application claiming against the deposit, or return the deposit. Should the landlord fail to do this, the landlord must pay the tenant double the amount of the security deposit.

During the hearing the tenant testified that he provided his forwarding address in writing to the landlord sometime between February 24 and 28, 2018. The tenant's documentary evidence includes a letter dated May 17, 2018 addressed to the landlord, with the tenant's forwarding address. The tenant's evidence also includes a text message dated March 4, 2018 in which the tenant provides his forwarding address.

I find the tenant's evidence is incongruent with his own testimony and that text messaging is not an acceptable method of service under the *Act*. In the absence of confirmation from the landlord that the forwarding address was received by either of the methods above I find that the forwarding address was only provided by the tenant on the application for dispute resolution. This method does not meet the requirement of a separate written notice.

The tenant did not confirm their correct forwarding address during the hearing. Therefore I find the tenant must serve the landlord with the tenant's forwarding address in writing and be prepared to prove service at any subsequent hearing. The tenant's application for return of the security deposit is premature and therefore dismissed with leave to reapply.

As the tenant was not successful in this application, I find the tenant is not entitled to recover the filing fee.

### Conclusion

The tenant's application for a monetary order for compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement is dismissed without leave to reapply.

The tenant's application to obtain a return of all or a portion of the security deposit is dismissed with leave to reapply.

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 26, 2018

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Residential Tenancy Branch