



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: *MNSD, MNDC, FF*

Introduction

This hearing dealt with an application by the landlord pursuant to the *Residential Tenancy Act* for a monetary order to recover lost wages, time spent to contact a cable service provider, loss of cable service and the filing fee. The landlord also applied to retain the security deposit in satisfaction of her claim. Both parties attended this hearing and were given full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The tenant was assisted by his agent.

As both parties were in attendance I confirmed service of documents. The landlord confirmed receipt of the tenant's evidence. The landlord agreed that she had not served her evidence on the tenant. The landlord's evidence consisted of a single page letter written by the tenant. Upon discussion of the contents of the letter, the tenant agreed that he had written the letter. I find that the landlord was served with the tenant's materials in accordance with sections 88 and 89 of the *Act*.

Issues to be decided

Is the landlord entitled to a monetary order?

Background and Evidence

The parties agreed that the tenancy started on April 01, 2017 and ended on November 30, 2017. The monthly rent was \$900.00 due on the first of each month. Prior to moving in the tenant paid a security deposit of \$450.00.

The landlord testified that the remote control for the cable box was missing at the end of tenancy. On November 30, 2017, the last day of tenancy, the landlord informed the tenant about the missing remote control. The tenant stated that he made efforts to locate it and found it in January 2018. On January 07, 2018, the tenant contacted the landlord to inform her that he had found it and was able to return it.

The landlord stated that it had been six weeks without a remote control and that she had replaced the remote and did not need the old one back. The landlord offered to accept the remote control from the tenant to use as a backup control and in return she would return \$100.00 of the \$450.00 security deposit. The tenant replied asking the landlord how much it cost to replace the remote control. The landlord did not reply.

The tenant made enquiries at the Residential Tenancy Branch and based on information obtained, the tenant mailed the remote control to the landlord with a note requesting the return of the deposit. The note is dated July 06, 2018 and also provides a forwarding address. The landlord made this application on July 17, 2017.

The landlord testified that she spent a lot of time making telephone calls to the cable company and she had a service call on December 27, 2017 to program the remote control in her home. The landlord stated that the cable company did not charge her anything for the remote control but the landlord is claiming time spent contacting the cable company, loss of a day's wages when she had to stay home to have the remote control programmed and the cost of the loss of cable service for 27 days. The landlord also stated that she gave her current tenant a rebate for the loss of cable services.

The landlord is claiming the following:

1.	Loss of wages	\$304.00
2.	Time spent on the telephone	\$57.00
3.	Loss of cable service	\$61.39
4.	Filing fee	\$100.00
	Total	\$522.39

The landlord did not file documentary evidence to support her lost wages, time spent on the phone or the rebate she provided to her new tenant. The tenant stated that the landlord lives in close proximity of the cable company and as per online information, a remote control could be replaced for approximately \$33.00.

Analysis

1. Lost wages - \$304.00

Based on the testimony of the landlord, I find that taking a full day off to program a remote control is probably not required. The landlord stated that in her line of employment she was unable to take less than a day off work.

The landlord did not file evidence of her inability to take less than a day off work nor did the landlord provide evidence to support her claim of having taken a full day off and lost \$304.00 in wages. Therefore the landlord's claim for lost wages is dismissed.

2. Time spent on the telephone - \$57.00

The landlord did not file evidence to prove that she spent a great deal of time on the telephone calls to the cable company. It is more likely than not that the landlord could have sent in an email to the cable company to ask for replacement remote control or gone down to the office to request one. I find that the landlord has not proven her claim for \$57.00.

3. Loss of cable service - \$61.39

The landlord stated that she was unable to provide cable service to the new tenant for 27 days and therefore she provided the tenant with a rebate of \$61.39 on his rent. The landlord could easily have provided documentation by way of a rent receipt or a text message conversation to support her claim of having given the new tenant a rebate of \$61.39 off his rent. Since the landlord failed to provide proof of her claim, it is dismissed.

4. Filing fee - \$100.00

Since the landlord has not proven her claim. She must bear the cost of filing her own application.

Overall the landlord has not proven her monetary claim. However, I find that by failing to return the remote control, the landlord suffered some inconvenience and accordingly I find that she must be compensated for the inconvenience.

Residential Tenancy Policy Guideline #16 states that an arbitrator may award "nominal damages" which are a minimal award. These damages may be awarded where there has been no significant loss, but they are an affirmation that there has been an infraction of a legal right.

Based on the testimony of both parties and the documents filed into evidence, I award the landlord \$100.00 for the inconvenience endured to replace the remote control.

Overall the landlord has established a claim in the amount of \$100.00. The landlord has a security deposit of \$450.00 in her possession. Therefore I order the landlord to retain \$100.00 in satisfaction of her monetary claim and to return the remainder of \$350.00 to the tenant.

Residential Tenancy Policy Guideline 17 provides policy guidance with respect to security deposits and setoffs; it contains the following provision:

RETURN OR RETENTION OF SECURITY DEPOSIT THROUGH ARBITRATION

1. The arbitrator will order the return of a security deposit, or any balance remaining on the deposit, less any deductions permitted under the Act, on:
 - a landlord's application to retain all or part of the security deposit, or
 - a tenant's application for the return of the deposit unless the tenant's right to the return of the deposit has been extinguished under the Act. The arbitrator will order the return of the deposit or balance of the deposit, as applicable, whether or not the tenant has applied for arbitration for its return.

In this application the landlord requested the retention of the security deposit in partial satisfaction of the monetary claim. Because the landlord has established a claim in the amount of less than the security deposit it is appropriate that I order the return of the balance of the security deposit to the tenant.

Accordingly, I so order. I grant the tenant a monetary order under section 67 of the *Residential Tenancy Act*, for \$350.00. This order may be filed in the Small Claims Court and enforced as an order of that Court.

Conclusion

I grant the tenant a monetary order in the amount of **\$350.00**.

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 22, 2018

Residential Tenancy Branch