



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Ministry of Housing and Social Development

## DECISION

### Dispute Codes

For the tenant – MNSD

For the landlord – MNR, FF

### Introduction

This decision deals with two applications for dispute resolution, one brought by the tenant and one brought by the landlords. The hearing commenced on September 01, 2009 and was reconvened to today's date to allow the tenant to serve additional evidence to the landlords. Both files were heard together. The landlord seeks a Monetary Order for unpaid rent and to recover the filing fee. The tenant seeks the return of his security deposit.

The tenant and landlord served the other party by registered mail with a copy of the Application and Notice of Hearing. I find that both parties were properly served pursuant to s. 89 of the *Act* with notice of this hearing.

Both parties appeared, gave affirmed testimony, were provided the opportunity to present their evidence orally, in written form, documentary form, to cross-examine the other party, and make submissions to me. On the basis of the solemnly affirmed evidence presented at the hearing I have determined:

### Issues(s) to be Decided

- Are there arrears of rent and if so, how much?
- Is the landlord entitled to recover filing fees from the tenant for the cost of the application?
- Did the tenant give his forwarding address to the landlord in writing?

- Is the tenant entitled to receive double his security deposit back?

## Background and Evidence

Both parties agree that the tenancy started on September 01, 2005 and ended on May 31, 2009. The parties disagree about the amount of rent that was due for this basement unit. The landlord claims the rent was \$400.00 the tenant claims the rent was \$650.00. The parties also disagree that the tenant paid a security deposit of \$300.00 on September 01, 2005.

The tenant has provided a tenancy agreement signed by both parties and dated February 20, 2007. The tenant claims that the landlords signed the tenancy agreement on this date. This agreement shows the rent for the suite at \$650.00 and shows the tenant paid a security deposit of \$300.00 on September 01, 2005.

The landlords testify that this agreement was not in place at the beginning of the tenancy but was produced by the tenant in 2007 when he asked the landlord to sign it for his own purposes. The landlord states that they did sign it but the information in it is false.

The landlord has produced copies of rent receipts for August, September, October and November, 2008 for the sum of \$400.00 each. They state the tenant has not paid rent since that time as he was unemployed and owes rent for December 2008 to May, 2009 to an amount of \$2,400.00

The tenant testifies that these receipts have been produced fraudulently as he was never given a receipt for his rent as the landlord did not want to declare the rent to the tax office. The tenant testifies that he does not owe any rent to the landlord and had been paying \$650.00 per month.

The tenant claims he gave the landlord written Notice to end the tenancy on April 27, 2009 to vacate the suite on May 31, 2009 due to disagreements with the landlords. The tenant claims that when he gave the landlord his notice they told him they were going to split the living room in the suite into two rooms for foreign students to move in. The tenant was concerned about this

Residential Tenancy Branch  
Ministry of Housing and Social Development

as he believed the landlord did not have permits in place and reported them to the City. He testifies that the landlords asked him to lie to the city inspectors and tell them that there were two bedrooms in the suite when he moved in. The tenant states that he had already moved out before the city inspectors came to the suite.

The landlord claims the tenant did not give written notice to them. The landlord testifies that they gave the tenant verbal notice to end the tenancy on April 20, 2009 as a relative was coming to stay and wanted the suite. The landlord states the tenant agreed to stay until such a time that the relative arrived. However, an argument occurred between them and on June 03 the landlord went to the tenants' suite and found he had moved out and left the keys. The landlord also testifies that the tenant did not leave a forwarding address and they were not aware of his whereabouts until they received notice of this hearing.

The landlord states they did not serve the tenant with a 10 Day Notice to End Tenancy for Unpaid rent as he had become unemployed and they were working with him until he received some money.

The tenant agrees that he was unemployed from August 2008 but his son was helping him to pay his rent.

## Analysis

I have carefully considered all the evidence before me, including the affirmed evidence of both parties. Based on the inconsistency between the tenants' evidence and the evidence of the landlords, I find I must look at the documentary evidence produced. The tenant has provided the tenancy agreement which has been signed by the landlords and states that the tenant paid a security deposit of \$300.00 on September 01, 2005. On a balance of probabilities I find that as the landlord has signed this agreement they must be bound by its terms. Therefore, I find the tenant is entitled to the return of his security deposit and any accrued interest.

Residential Tenancy Branch  
Ministry of Housing and Social Development

In the matter of the landlords application for unpaid rent, the landlord has the burden of proof and must show (on a balance of probabilities) that the rent was not paid. This means that if the landlord's evidence is contradicted by the tenant, the landlord will generally need to provide additional, corroborating evidence to satisfy the burden of proof.

Section 26(2) of the *Residential Tenancy Act* states:

**26**

(2) that a landlord must provide a tenant with a receipt for rent paid in cash.

As the landlord has only provided receipts for four months rent payments for 2008 and the tenant testifies that he did not receive any receipts for cash and the amount on the receipts contradicts the tenancy agreement which the landlord has signed, I find I can not rely on these receipts without other corroborating evidence such as a rent ledger or a Notice to End Tenancy for unpaid rent. Therefore, I find the Landlord has not provided sufficient evidence to show the tenant owes rent for six months from December 2008 to May, 2009.

The tenant has not provided any evidence to corroborate that he did give the landlord his forwarding address in writing on April 27, 2009. However, I accept that he did provide the landlord with his forwarding address on his application for Dispute Resolution on June 20, 2009. The landlord had 15 days to return the tenants security deposit or file an application to keep this. The landlord did not file an application to retain the tenants' security deposit. Therefore, I find the tenant is entitled to receive double the return of his security deposit pursuant to s. 38 of the Act. A monetary Order has been issued to the tenant for the following amount:

Double the security deposit	\$600.00
Total amount due to the tenant	\$610.64

Conclusion



# Dispute Resolution Services

Page: 5

Residential Tenancy Branch  
Ministry of Housing and Social Development

The landlord did not provide any other documents to support his claim of \$2,400.00 for unpaid rent. Therefore, I find the landlords application is dismissed without leave to reapply.

I HEREBY FIND in favor of the tenants monetary claim for the return of his security deposit and accrued interest. A copy of the tenants' decision will be accompanied by a Monetary Order for **\$610.64**. The order must be served on the respondent and is enforceable through the Provincial Court as an order 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: October 21, 2009.

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Dispute Resolution Officer