



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing and Social Development

## DECISION

Dispute Codes      MNSD, FF

### Introduction

This hearing dealt with cross Applications for Dispute Resolution. The landlord has applied for a monetary order to retain the security deposit. The tenants have applied for a monetary order for the return of the security deposit.

The hearing was conducted via teleconference and was attended by both tenants and the landlord. The landlord appeared 20 minutes after the start of the hearing and hung up prior to the end of the hearing.

The tenant's application named only the female tenant and the landlord's application only named the male tenant, in the hearing both applications were amended to name both tenants.

### Issues(s) to be Decided

The issues to be decided are whether either the landlord or the tenant is entitled to a monetary order for all or part of the security deposit and to recover the filing fee from the tenant for the cost of the Application for Dispute Resolution, pursuant to sections 38, 67, and 72 of the *Residential Tenancy Act (Act)*.

### Background and Evidence

The tenants testified that on July 24, 2009 the male tenant spoke with the landlord asking to rent the rental unit and in particular indicated they would be interested in a one year fixed term tenancy. According to the tenant's testimony the landlord agreed. The male tenant testified that he spoke again with the landlord on July 27, 2009 and she again confirmed that she would provide a one year fixed term.

Based on this verbal agreement, on August 4, 2009 the tenants provided the landlord with a cheque for a security deposit of \$500.00. The tenants provided bank statements showing the cheque was cashed on August 6, 2009.

The tenants testified that they had arranged to meet with the landlord on the weekend of August 8 and 9, 2009 to sign a one year fixed term tenancy agreement. Prior to the meeting the parties ran into each other in the grocery store. The tenants stated the landlord informed them at this time that she could not break her contract with her realtor

to take the rental unit off the market and could therefore not commit to a one year fixed term tenancy.

The landlord testified that at no time did she agree to a fixed term tenancy. She further testified that at the chance meeting in the grocery store they spoke only about the upcoming move in and the tenants seemed to be happy about the move and they also talked about taking a holiday.

The landlord testified that on August 13, 2009 the tenants called her to say they would not be moving. The tenants contend that they went away from the grocery store not sure of what they were going to do and on August 10, 2009 contacted the landlord to say that they could not accept the tenancy on a month to month basis.

The landlord confirmed that the rental unit had sold a few days ago and that she never did rent out the property but that her daughter used the property for storage from September 2009 until the sale of the property.

### Analysis

During the hearing the landlord provided conflicting, incomplete and inconsistent testimony. At one point she stated she had rented the rental unit out again in September, she later admitted that she had not but that her daughter was using it.

Based on the landlord's behaviour in the hearing and her reluctance to participate by joining the hearing late and leaving the hearing without notice; combined with her inconsistent testimony, I find her testimony to be unreliable.

Having said this, I also find the parties entered into a verbal tenancy agreement effective with the exchange of the security deposit. Once the tenancy agreement had been entered into the *Residential Tenancy Act* applies.

While the terms of the tenancy agreement (fixed term or month to month) are disputed by the parties, I can only rely upon the conduct of the parties and not the circumstances related to the type of tenancy. As the landlord contends there was no fixed term agreement then I cannot hold the tenants accountable to the notice to end tenancy requirements for a fixed term tenancy.

As the tenancy was due to begin on August 15, 2009 I find that rent would have been due on the 15<sup>th</sup> of the month and as such the tenants, in order to be compliant with Section 45 of the *Act*, would need to provide the landlord with one month notice to end the tenancy by August 14, 2009 to be effective on September 15, 2009.

The tenants provided notice to end the tenancy when they contacted the landlord on August 10, 2009 (or August 13, 2009) to state they would not be moving into the rental unit. I therefore, find the tenancy ended on September 15, 2009.

Section 7(2) of the *Act* requires a party who is claiming for compensation for damage or loss that results from the other's non-compliance with the *Act* must do whatever is reasonable to minimize the damage or loss. The landlord chose not to rent the rental unit again and use of the property changed to the landlord's personal use in September, 2009 when she allowed her daughter to use it for storage. I, therefore, find the landlord has no claim to retain the security deposit for any loss or damage and dismiss her application in its entirety, without leave to reapply.

### Conclusion

I find that the tenant is entitled to monetary compensation pursuant to Section 67 and therefore grant a monetary order in the amount of **\$550.00** comprised of \$500.00 security deposit owed and the \$50.00 fee paid by the tenant for this application.

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 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: February 25, 2010.

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Dispute Resolution Officer