



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing and Social Development

## **DECISION**

Dispute Codes MNDC, (MNSD), FF

### Introduction

This matter dealt with an application by the tenant for a Monetary Order for money owed or compensation for loss or damage under the Residential Tenancy Act (Act), regulations or tenancy agreement, and to recover the filing fee for this application. The tenant amended her application to include the recovery of her security deposit. The landlord did not voice any objections to this amendment. This hearing dealt with two applications from the tenant and I have recorded my decision for each application separately.

Service of the hearing documents was done in accordance with section 89 of the *Act*, and sent by registered mail to the landlord. The landlord confirmed receipt of the hearing documents.

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 witness, 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

- Is the tenant entitled to a Monetary Order for money owed or compensation for damage or loss?
- Is the tenant entitled to the return of her security deposit?

### Background and Evidence

This tenancy started on April 01, 2008. The rent for this unit was \$800.00 per month and was due on the first of each month. The tenant paid a security deposit of \$400.00 on April 01, 2008. The tenant did not reside in the unit but sublet it with the landlords' permission. The tenant



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rented another unit in this building from the landlord and sublet this unit also. Both applications heard at this hearing dealt with similar issues.

The tenant states the landlord ended her tenancy on June 30, 2010 without proper notice to do so. The tenant states she was out of the country when she received a phone call from the landlord saying it was in the tenants' best interests to end the tenancies. The tenant states she did not agree, during this phone call, to end her tenancies but told the landlord she would get back to her on her return.

The landlord states the tenant agreed to end the tenancies for both her units after she called her at the end of March, 2010. The landlord states she did tell the tenant that it would be in her best interests to end her tenancy as she had received complaints about her from one of her tenants and they had had difficulties with other sub-tenants behaviour in the past. The landlord states the tenant agreed and said she would end the tenancies and would get back to the landlord when she knew when the lease for this unit was ending.

The landlords witness testifies that she heard a telephone conversation between the landlord and tenant because it was on speaker phone. She states she heard the tenant agree to end the tenancies. She states that this was a pleasant conversation between the landlord and tenant. She states the tenant said when the lease was up on unit 104 she would give up both units. The witness states the tenant agreed to give back the units but stated she would get back to the landlord when she knew the date that her lease was up with her subtenants in unit 104.

The tenant cross exams this witness and asks her if she was asked or told by the landlord to end the tenancies. The witness replies you were asked to end the tenancies.

The tenant states the landlord has ended this tenancy on June 30, 2010 and has asked her subtenants to remain as the landlords' tenant.

The tenant seeks compensation from the landlord for \$400.00 in moving expenses as she had to remove all her furniture from this unit. The tenant seeks a loss of rental income of \$400.00 as



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she asked her subtenant to rent another unit from her but she claims he stayed in the rental unit with the landlord of the building.

The tenant states the landlord did not return her security deposit of \$400.00 at the end of the tenancy and the landlord had her address since the start of the tenancy.

The tenant seeks to recover her \$50.00 filing fee for this application.

The landlord disputes the tenants claim for moving expenses as the agreement with her subtenant had ended and as she agreed to end her tenancy with the landlord at that time.

Therefore, the tenant would have had to remove her furniture from the building and should not be entitled to recover this from the landlord. The landlord also disputes the tenants claim for a loss of income as she states her agreement with her subtenant also ended at this time and he was free to decide who he wanted to rent from therefore the tenant did not actually lose any rent. The landlord agrees she has not returned the tenants security deposit and this was an oversight by her.

## Analysis

I have carefully considered all the evidence before me, including the affirmed evidence of both parties and witness. In this matter the landlord claims the tenant agreed to end the tenancy when the lease expired on the unit on June 30, 2010. The tenant disputes this and states she did not agree to end the tenancies with the landlord. When one Party's evidence is contradicted by the other Party the burden of proof falls on the person making the claim to provide corroborating evidence to support her claim. In this instance the landlord is claiming that the tenant did agree to end the tenancy and she has provided a witness who heard the conversation between the two Parties over the speaker phone.

I find the witness verbal testimony to be credible concerning the conversation that took place between the landlord and tenant and therefore I find I prefer the evidence of the landlord in this matter. Consequently, it is my decision that a verbal agreement was in place to end the tenancy



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at the end of the sub-tenants lease on June 30, 2010. I find the tenant has not established her claim for compensation of \$400.00 for moving costs as she would have had to move her belongings from the rental unit at this time. I further find the tenant has not established her claim for a loss of rental income of \$400.00 as her subtenant was entitled to enter into a new tenancy agreement with the landlord of the building at the end of his lease.

The landlord has agreed that she forgot to return the tenants security deposit at the end of the tenancy and I find therefore that the tenant is entitled to a Monetary Order to recover the security deposit of \$400.00 plus accrued interest of \$4.51 to a total amount of **\$404.51** pursuant to section 38 of the Act.

As the tenant has been partially successful with her claim I find she is entitled to recover her **\$50.00** filing fee from the landlord pursuant to section 72(1) of the Act. A Monetary Order has been issued to the tenant for the sum of **\$454.51**

## Conclusion

I HEREBY FIND in partial favor of the tenants monetary claim. A copy of the tenants' decision will be accompanied by a Monetary Order for **\$454.51**. The order must be served on the respondent and is enforceable through the Provincial Court as an order of that Court.

The remainder of the tenants' application is dismissed without 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: October 27, 2010.

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Dispute Resolution Officer