



# Dispute Resolution Services

Residential Tenancy Branch  
Ministry of Public Safety and Solicitor General

## **DECISION**

Dispute Codes      MNSD, FF

### Introduction

This hearing dealt with an application by the tenant for a monetary order. The landlord personally participated in the conference call hearing and the tenant was represented by an agent. The landlord objected to the agent's participation but was informed that the tenant was entitled to appoint an agent pursuant to the Residential Tenancy Rules of Procedure.

### Issue to be Decided

Is the tenant entitled to a monetary order as claimed?

### Background and Evidence

The parties agreed that the tenancy began in or about May 2010 and ended on or about November 15, 2010. The parties further agreed that the tenant had paid a \$175.00 security deposit and had prepaid his rent, at a rate of \$350.00 per month, through the end of February 2011. The tenant seeks the return of rent for December 2010 – February 2011 inclusive as well as the return of the \$175.00 security deposit.

The landlord testified that she did not learn that the tenant was vacating the rental unit until a day or two before he actually moved out and stated that she kept the \$350.00 payment for December because she was unable to re-rent the unit for that month. The landlord claimed that she paid the tenant \$700.00 in cash which represented the return of rent prepaid for January and February. The landlord further claimed that she paid the tenant \$100.00 in cash as a partial refund of his security deposit and that she retained \$75.00 from the deposit because the tenant had damaged the wall of the rental unit and had not adequately cleaned.

The tenant's agent testified that she was present when the tenant wrote a note on October 31, 2010 in which he advised the landlord in writing that he would be vacating the unit at the end of November and that she observed him slip the note under the landlord's door. The tenant's agent was unsure as to whether the tenant had provided a forwarding address to the landlord. The landlord denied having received a forwarding address from the tenant.

### Analysis

First addressing the claim for the return of rent which was prepaid for December – February, I find that the landlord has failed to prove that she gave the tenant a cash payment of \$700.00. I further find that the landlord has failed to prove that she had the right to keep the rental payment for December. I find it more likely than not that the tenant served the landlord with a notice that he would be vacating the rental unit and I find that the landlord failed to act reasonably to minimize her losses. She acknowledged that she did not advertise the rental unit until she had repaired damage to a wall in the unit, but provided no evidence to prove her claim that the damage alleged had occurred during the tenancy. The landlord provided no photographs of the damage or the condition of the unit and I am unable to find that the unit could not be immediately advertised. I award the tenant \$1,050.00 which represents prepaid rent for December 2010 – February 2011 inclusive.

Section 39(1) of the Act requires the landlord to deal with the security deposit only after she has received the tenant's forwarding address in writing. I find that the tenant's provision of his address on the application for dispute resolution seeking the monetary order is insufficient to trigger the landlord's obligation as the address was provided for a different purpose. I find that the tenant has not proven that he provided the landlord with his forwarding address in writing and accordingly I find that the claim is premature and I dismiss the claim for the return of the deposit with leave to reapply.

I find that the tenant is entitled to recover the \$50.00 filing fee paid to bring his application and I award him that sum.

### Conclusion

The tenant is awarded \$1,100.00. I grant the tenant a monetary order under section 67 for \$1,100.00. This order may be filed in the Small Claims Division of the Provincial Court 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: April 29, 2011

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Residential Tenancy Branch