



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

## Decision

Dispute Codes      MNSD

### Introduction

This hearing dealt with an application by the landlord for an order permitting him to retain the security deposit. Both parties participated in the conference call hearing.

### Issue to be Decided

Should the landlord be permitted to retain the security deposit?

### Background and Evidence

The parties agreed that the tenancy began on December 23, 2010 at which time the tenant paid a \$312.50 security deposit and that although it had been set for a fixed term of one year, ended in February 2011 at the tenant's initiative.

The landlord testified that the tenant smoked heavily in the unit and did not properly clean the unit during the last month of the tenancy and therefore the unit did not appeal to prospective tenants and the unit remained empty for the month of March. The landlord seeks to retain the security deposit in compensation for the loss of income the landlord suffered. The landlord was uncertain whether the unit had been shown during the month of February.

The tenant agreed that the rental unit was somewhat dirty, but stated that there were other difficulties which would have deterred prospective tenants, including a leak in the unit which soaked the carpet.

The landlord acknowledged that there was a leak but that it did not render the unit uninhabitable. The landlord stressed that the extreme smell of smoke was offensive to prospective tenants but acknowledged that the tenancy agreement did not prohibit smoking in the unit.

### Analysis

The landlord bears the burden of not only proving loss, but also proving that he acted reasonably to minimize his loss. The landlord's agent at the hearing was unable to confirm whether the rental unit had been shown at all in February, which leads me to believe that the unit may not have been advertised. Smoking was permitted in the unit and it was reasonable for the tenant to smoke therein. The landlord cannot expect the tenant to cease smoking for a month in order to permit the landlord to show the unit. I find insufficient evidence to show that other than the smoke, the unit was so unclean that showings could not have taken place.

I find that the landlord has not proven his claim and accordingly I dismiss the claim.

Residential Tenancy Policy Guideline #17-2 provides as follows:

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.

I find no evidence to show that the tenant has extinguished his right to the return of the deposit. In the spirit of administrative efficiency and pursuant to the terms of the Residential Tenancy Policy Guidelines, I order that the landlord forthwith return to the tenant the \$312.50 security deposit. I note that no interest is payable for the period of the tenancy. I grant the tenant a monetary order under section 67 for \$312.50. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

### Conclusion

The landlord's claim is dismissed and the tenant is granted a monetary order for \$312.50.

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: June 22, 2011

---

Residential Tenancy Branch