



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

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### Introduction

A substantial amount of documentary evidence and written arguments has been submitted by the parties prior to the hearing. I have thoroughly reviewed all submissions.

I also gave the parties the opportunity to give their evidence orally and the parties were given the opportunity to ask questions of the other parties.

All testimony was taken under affirmation.

### Issue(s) to be Decided

This is a request for return of \$400.00 rent paid for the month of May 2011, and request for return of the \$200.00 security deposit.

### Background and Evidence

The applicant testified that:

- The landlord got angry with him over a guest he had in the rental property and as a result they had a heated discussion at which time the landlord asked him to vacate and demanded he hand over his keys.
- He did hand over his keys and agreed to move of the rental unit however at that time the landlord also agreed to return the rent he had paid in advance for the month of May 2011.

- After moving out of the rental unit the landlord refused to return the prepaid rent, and also refused to return his security deposit.

The applicant is therefore requesting the return of his prepaid May 2011 rent in the amount of \$400.00, and the return of his \$200.00 security deposit.

The respondent testified that:

- He did not force the tenant to move out of the rental unit, or force the tenant to return his keys, the tenant agreed to do so.
- After a heated exchange with the tenant, he and the tenant came to a verbal mutual agreement, with the assistance of police officers, for the tenant to move out by noon on April 22, 2011, and if he did so he would get his May 2011 rent back. They also agreed that the landlord could keep the security deposit.
- The tenant did not move out on April 22, 2011, and kept on delaying leaving the rental unit and therefore he withdrew his offer to return the May 2011 rent, and informed the tenant that since his rent was paid he could stay to the end of May 2011.
- Therefore since the tenant knew that he did not have to vacate the rental unit, it was his choice to vacate and he did so without giving any notice. He therefore does not believe that he should have to return any of the rent paid for the month of May 2011, or the security deposit.
- He has also never received a forwarding address in writing from the tenant for the return of the security deposit.

### Analysis

#### May 2011 rent

It is my decision that I will allow the tenants claim for the return of his May 2011 rent.

Section 7(2) of the Residential Tenancy Act states:

(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Therefore if a tenant vacates a rental unit without giving the required notice the landlord must attempt to re-rent the unit.

Therefore although I accept the landlords claim that the tenant was not forced to move out of the rental unit, and in fact was informed that he did not have to vacate, the landlord has provided no evidence to show that he attempted to re-rent the unit and thereby minimize the loss.

#### Security deposit

The tenant has applied for the return of his remaining security deposit; however the tenant did not give the landlord a forwarding address in writing, as required by the Residential Tenancy Act, prior to applying for arbitration.

Therefore at the time that the tenant applied for dispute resolution, the landlord was under no obligation to return the security deposit and therefore this application is premature.

I therefore dismiss the claim for return of the security deposit with leave to re-apply.

At the hearing the tenant stated that the address on the application for dispute resolution is his present forwarding address; therefore the landlord is now considered to have received the forwarding address in writing as of today, August 22, 2011.

#### Conclusion

I have issued an order for the respondent to pay \$400.00 to the applicant, and the remainder of the claim is dismissed with 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: August 22, 2011.

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Residential Tenancy Branch