



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### Dispute Codes

For the tenant – MNSD

For the landlord – MNR, MNSD, FF

### Introduction

This decision deals with two applications for dispute resolution, one brought by the tenant and one brought by the landlord. Both files were heard together. The tenant seeks a Monetary Order for the return of double his security deposit. The landlord seeks a Monetary Order to recover unpaid rent. The landlord also seeks an Order to keep the tenants security deposit and to recover his filing fee.

The tenant served the landlord in person on or about July 14, 2011 with a copy of the application and a Notice of the Hearing. The landlord served the tenant by registered mail on September 16, 2011 with a copy of the Application and Notice of Hearing. I find that both parties were properly served pursuant to s. 89 of the *Act* with notice of this hearing.

The landlord and an agent for the tenant appeared, gave sworn testimony, were provided the opportunity to present their evidence orally, in written form, documentary form, to cross-examine the other party, and make submissions to me. On the basis of the solemnly sworn evidence presented at the hearing I have determined:

### Preliminary Issues

The agent for the tenant states the tenant has requested an adjournment of the proceeding today as he has had to leave the country and is not able to attend the hearing himself. The tenant has requested this adjournment on the grounds that his hearing was originally scheduled to take place in July, 2011 and due to a scheduling conflict it was rescheduled to

this date when the tenant was unable to attend. The tenants' agent states she is not familiar enough with the history of the matter to take part in the hearing on the tenants' behalf.

I have considered this adjournment and find as the tenant was aware that his hearing, due to be held in July, 2011, would be rescheduled to October, 2011 he had ample time to brief his agent so she could attend on his behalf while he was out of the country. Therefore I will not adjourn the hearing today and the hearing will proceed as scheduled.

Both Parties were ill prepared for the hearing and my decision is based upon the evidence and testimony heard today. The tenants' agent did telephone the tenant during the hearing to clarify details she was unsure of.

#### Issue(s) to be Decided

- Is the tenant entitled to recover double his security deposit?
- If not is the landlord entitled to keep the security deposit?
- Is the landlord entitled to a Monetary Order to recover unpaid rent?

#### Background and Evidence

Both parties agree that this month to month tenancy started on June 01, 2009. Rent for this unit is \$420.00 per month and is due on the 1<sup>st</sup> day of each month in advance. The tenant paid a security deposit of \$210.00 on June 01, 2009. This tenancy ended on October 16, 2010.

The tenants' agent testifies that a previous hearing was held in May, 2011 in which the landlord agreed he had changed the locks of the tenant unit when he mistakenly thought the tenant had abandoned the rental unit. The tenants' agent states the tenant informed her that he had paid his rent in cash on October 01, 2010. The tenant gave the landlord his forwarding address in writing on April 07, 2011 and the landlord did not return his security deposit within 15 days. The tenant therefore seeks to recover double his security deposit to the sum of \$420.00.

The landlord disputes the tenants' statements and states the tenant did not pay rent for October, 2010 as he was in a detention centre from mid September to mid October, 2010. Therefore the landlord argues how the tenant would have been able to pay his rent in cash on October 01, 2011. The landlord testifies he re-rented the unit on October 18, 2011 and therefore seeks to recover half a months' rent of \$210.00 from the tenant.

The landlord seeks to keep the tenants security deposit in satisfaction of the rent arrears and seeks to recover his \$50.00 filing fee.

The tenants' agent testifies that the issue of non payment of rent was dealt with at the previous hearing and as this matter has been previously settled it cannot be heard again.

#### Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties. With regard to the tenants claim to recover double his security deposit; S. 38(1) of the *Act* says that a landlord has 15 days from the end of the tenancy agreement or from the date that the landlord receives the tenants forwarding address in writing to either return the security deposit to the tenant or to make a claim against it by applying for Dispute Resolution. If a landlord does not do either of these things and does not have the written consent of the tenant to keep all or part of the security deposit then pursuant to section 38(6)(b) of the *Act*, the landlord must pay double the amount of the security deposit to the tenant.

Based on the above and the evidence presented I find that the landlord did receive the tenants forwarding address in writing dated April 07, 2011. As a result, the landlord had until April 22, 2011 to return the tenants security deposit or apply for Dispute Resolution to make a claim against it. I find the landlord did not return the security deposit and did not file an application for Dispute Resolution to keep the deposit until September 16, 2011. Therefore, I find that the tenant has established a claim for the return of double the security deposit to the sum of **\$420.00** pursuant to section 38(6)(b) of the *Act*.

I have considered the arguments brought forth by the tenants agent concerning the unpaid rent. I have read the decision issued on May 30, 2011 and find that the matter of unpaid rent did not form part of that decision but only refers to the tenants' testimony in which he stated that he had advised the landlord that he intended to pay rent as soon as he got out of custody on October 25, 2010. Consequently Res Judicata does not apply in this matter and the matter of unpaid rent has been dealt with at this hearing.

In regard to the landlords claim to recover unpaid rent for October, 2010 I find that the tenant has contradicted his testimony given at the last hearing held in May, 2011. At this hearing he gave information over the phone to his agent that he did pay rent in cash on October 01, 2011. However, during the May, 2011 hearing he stated he intended to pay his rent by October 25, 2010 when he got out of custody. Therefore, it is my decision that rent for October has not been paid and the landlord has established his claim to recover unpaid rent to the sum of **\$210.00**.

As the landlord did not file his application to keep the tenants security deposit within the 15 allowable days his application to keep the security deposit is dismissed. The landlord has applied to recover his \$50.00 filing fee from the tenant. As the landlord has been partially successful with his claim I find he is entitled to recover half his filing fee to the sum of **\$25.00** pursuant to s. 72(1) of the *Act*.

As both parties are entitled to a Monetary award I have offset the landlords monetary award against that of the tenants. The tenant has been issued with a Monetary Order as follows:

Double security deposit	\$420.00
Less unpaid rent due to the landlord	(-\$210.00)
Less filing fee due to the landlord	(-\$25.00)
<b>Total amount due to the tenant</b>	<b>\$185.00</b>

### Conclusion

I HEREBY FIND in favor of the landlord's monetary claim. The sum of \$235.00 has been offset against the tenants' monetary award.

I HEREBY FIND in favor of the tenants' monetary claim. A copy of the tenants' decision will be accompanied by a Monetary Order for **\$185.00**. The order must be served on the landlord and is enforceable through the Provincial Court 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: October 17, 2011.

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Residential Tenancy Branch