



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### Dispute Codes:

MNR, MNSD. FF

### Introduction

This hearing was scheduled in response to the landlord's Application for Dispute Resolution, in which the landlord has made application for a monetary Order for unpaid rent, to retain the security deposit and to recover the filing fee from the tenant for the cost of this Application for Dispute Resolution.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the evidence and testimony provided.

### Preliminary Matters

In the details of the dispute section of the application the landlord requested liquidated damages; I considered this claim in relation to compensation for damage or loss.

### Issue(s) to be Decided

Is the landlord entitled to a monetary Order for unpaid rent and damage or loss?

Is the landlord entitled to retain the deposit paid by the tenant?

Is the landlord entitled to filing fee costs?

### Background and Evidence

The parties agreed that on July 20, 2011, the tenant signed an application for tenancy and paid what the parties referred to as a deposit. The tenant gave the landlord \$650.00 and signed the application "Acceptance of Terms and conditions" portion of the application. A copy of a blank application was submitted as evidence; the parties did not disagree that this document had been completed and signed.

The Terms and Conditions portion of the application for tenancy stated, in part:

*"This offer is open to acceptance....until 6:00 p.m. on the fifth day following the date of this application. Should I/We cancel prior to the day of acceptance, then I/We agree that \$50 will be retained as the liquidated damages for processing this application. Cancellation after the fifth (5<sup>th</sup>) day will result in forfeiture of the applicant's deposits. Should my/our offer not be accepted by (the landlord) my/our deposit shall be refunded in full without interest."*

The parties agreed that the tenant made a number of visits to the unit and that on July 28, 2011, she determined that she would not accept the unit, as the tenant believed there was evidence of a mouse infestation and bed bug problems in the building. The tenant had asked the agent if there were any pest issues in the building and she had been assured there were none. On July 28, 2011, the parties agreed that the occupant of unit 103 told them both she had experienced mouse problems for 3 years.

The tenant then informed the landlord that she would not be moving into the unit.

The landlord stated some people have lived in the building for 15 to 20 years and never had any issues with pests. The landlord stated that the unit in question had not had any reported pest issues. The tenant submitted that there was steel wool in some areas of the base boards and mouse poison in one cupboard.

The landlord has claimed unpaid August, 2011, rent in the sum of \$1,300.00 plus liquidated damages in the sum of \$650.00.

A tenancy agreement was not signed.

### Analysis

Section 15 of the Act provides:

**15** *A landlord must not charge a person anything for*

- (a) accepting an application for a tenancy,*
- (b) processing the application,*
- (c) investigating the applicant's suitability as a tenant, or*
- (d) accepting the person as a tenant.*

I have considered the "Acceptance of Terms and Conditions" portion of the landlord's application for tenancy and find that the landlord accepted a fee that was held as a part of an application process. Section 17 of the Act determines how a security deposit may be paid:

**17** *A landlord may require, in accordance with this Act and the regulations, a tenant to pay a security deposit as a condition of entering into a tenancy agreement or as a term of a tenancy agreement.*

A security deposit forms part of a tenancy agreement and once paid, there can be no doubt that a tenancy has then been agreed to by the parties. I find that the payment of a fee fails to establish a tenancy agreement and, in the absence of a signed tenancy agreement or payment of a security deposit as provided by the Act, a tenancy cannot be established.

As the terms and conditions of the application do not comply with the Act, I find that the \$650.00 payment made by the tenant was a fee and, in the absence of a signed tenancy agreement and payment of a security deposit as provided by the Act, that a tenancy was not established. Whether the parties intended to complete their transaction by entering into a contract, or not; I find that the parties had agreed to agree and, when the tenant determined that the building had pests, she determined she would not complete that agreement.

Therefore, in the absence of a properly executed tenancy agreement and, based on the payment of what I find was a fee and not a security deposit; I find that a tenancy was not created and I decline jurisdiction.

As I have declined jurisdiction I cannot order return of the fee to the tenant; other avenues may be available to the tenant.

### Conclusion

I have declined jurisdiction.

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: November 09, 2011.

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Residential Tenancy Branch