



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## Decision

### Dispute Codes:

MNSD, MNDC, FF

### Introduction

This Dispute Resolution hearing was convened to deal with an application by the tenant seeking a monetary order for a refund of rent paid, the return of the tenant's \$325.00 security deposit and the \$50.00 fee paid by the tenant for this application.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained. The participants had an opportunity to submit documentary evidence prior to this hearing, and the evidence has been reviewed. The parties were also permitted to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the affirmed testimony and relevant evidence that was properly served.

### Issues to be Decided

- Is the tenant entitled to the return of the security deposit pursuant to section 38 of the Act?
- Is the tenant entitled to monetary compensation pursuant to *section 7* and *section 67* of the Act?

### Background and Evidence

The tenant was seeking to receive a monetary order for the return of the security deposit retained by the landlord after he left on August 15, 2012, and monetary compensation for half a month rent paid in August 2012.

The tenancy began on August 1, 2012. The rent paid was \$650.00 and a security deposit of \$325.00 was also paid.

The tenant testified that, shortly after the tenancy commenced, he was forced to move out because there were serious problems with the tenancy requiring police intervention.

The tenant vacated on August 15, 2012. The tenant testified that the landlord never refunded his \$325.00 security deposit which is being claimed. The tenant is also claiming a refund of half a month's rent, in the amount of \$325.00 because he had paid for the entire month of August 2012 but was allegedly forced to vacate half way through the month. .

### **.Analysis**

#### **Security Deposit Claim by Tenant**

Section 38 of the Act states that a landlord is required to, either repay the security deposit in accordance with the regulations, or make an application for dispute resolution claiming against the security deposit.

I find that under the Act, a landlord is not merely entitled to retain the deposit except when the tenant agrees in writing that a landlord can keep the deposit to satisfy a liability or obligation of the tenant, or if an order is granted through dispute resolution permitting the landlord to keep the deposit.

I find that the tenant did not give the landlord written permission to keep the deposit, nor did the landlord make an application and successfully obtain an order to keep the deposit.

I find that the landlord is still in possession of the tenant's \$325.00 security deposit held in trust on behalf of the tenant and this security deposit must be refunded forthwith.

#### **Analysis: Damages and Compensation**

With respect to the tenant's claim for reimbursement of a portion of the rent paid for August 2012, in the amount of \$325.00, I find that the tenant terminated the tenancy without notice.

I find that section 26 of the Act states that rent must be paid when it is due, under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement. I find that the rent for the month of August became due and payable as of August 1, 2012.

Section 45 of the Act permits a tenant to end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that:

(a) is not earlier than one month after the date the landlord receives the notice,  
and

(b) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

I find that, under the Act and the agreement, proper written notice by the tenant was required to be given one-month prior to vacating.

While I accept the tenant's testimony that the circumstances prompted him to suddenly vacate the unit, I find that the tenant is not entitled to a refund for the portion of the month of August after he had vacated. This finding is based on the fact that:

1. rent was due and payable as of the first day of each month,
2. the tenant did not give sufficient notice of one month under the Act that he would be vacating, and,
3. the date for properly ending a tenancy under the Act must be the day before the day rent is due.

Based on the testimony and evidence presented during these proceedings, I find that the tenant is entitled to total monetary compensation of \$375.00, comprised of \$325.00 for the security deposit, wrongfully retained by the landlord, and the \$50.00 fee paid by the tenant to file this application.

I hereby grant a monetary order in the amount of \$375.00 in favour of the tenant. This order must be served on the respondent and if unpaid may be enforced in Small Claims Court if necessary.

The remainder of the tenant's application is dismissed without leave.

### **Conclusion**

The tenant is partially successful in the application and is awarded a refund of the security deposit and the claim for a refund of rent is dismissed.

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: May 15, 2013

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Residential Tenancy Branch

