



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **Decision**

### **Dispute Codes:**

MNDC, MNR, MNSD, FF

### **Introduction**

This Dispute Resolution hearing was convened to deal with an application by the tenant for the return of the security deposit under the Act in addition to the \$50.00 fee paid by the tenant for this application. The hearing was also held to hear a cross application by the landlord seeking monetary compensation for loss of rent and other damages and reimbursement of the \$50.00 filing fee.

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 landlord entitled to be compensated for loss of revenue?

Is the tenant entitled to the return of the security deposit?

### **Background and Evidence**

The landlord testified that the tenancy began on February 1, 2013 as a one year fixed term and the rental rate was \$1,100.00. A security deposit of \$550.00 was paid at the start of the tenancy. The landlord testified that the tenant never gave any written notice to terminate the tenancy and moved out in April 2013.

The landlord testified that the tenant had verbally told the landlord in March 2013, that they had lost their jobs and that they would have to terminate the lease for that reason. The landlord testified that he tried to assist the tenants by finding them new employment, which they apparently declined. The landlord testified that he had also

tried to re-rent the unit as quickly as possible so that the tenants could move out without further delay and placed an advertisement listing the vacancy on March 27, 2013.

The landlord testified he found new renters willing to move into the unit on April 15, 2013, and proposed this date to the tenants. The landlord stated that, had the tenants consented, he would have been able to refund half a month rent to the tenants.

However, according to the landlord, the tenants stated that they were not willing to vacate at that time. The landlord testified that, because of the tenant's unwillingness to move in mid-April, the landlord lost these potential renters.

The landlord testified that the tenant's violated the Act by terminating the tenancy prior to the end of the fixed term tenancy and they also failed to give adequate written Notice. The landlord testified that he managed to re-rent the unit, but lost a month rent for May 2013 in the amount of \$1,100.00, which is being claimed. The landlord is also requesting to keep the tenant's \$550.00 security deposit.

The landlord testified that on April 17, 2013, the tenants then provided him with a written forwarding address and requested that the landlord complete a move-out condition inspection on that date. The landlord stated that he was not in town and told the tenants that he was unable to do the inspection on that date.

The landlord testified that, although the tenants had requested the final move-out inspection on April 17, 2013, the tenants still retained the keys to the unit and made a specific request that the landlord not enter the suite without the tenant's agent in attendance, until the final inspection could be completed.

The landlord testified that he continued to advertise the unit, but felt that he could not show it to interested parties as he believed that the tenants still had possession of the unit until the end of April, since they had never relinquished the keys. The landlord pointed out that the tenants had prohibited the landlord from entering the suite until the move out condition inspection could be arranged.

The landlord testified that when the tenancy ended on April 30, 2013, he still did not conduct a move-out condition inspection jointly with the tenants. The landlord testified that the tenants had apparently already completed their own inspection and filled out the report on April 17, 2013, without the landlord's participation. The landlord stated that the tenants provided their forwarding address a second time on April 30, 2013.

The landlord pointed out that, because the tenants had paid rent until the end of April 2013, his position is that the tenancy actually did not end until April 30, 2013.

The landlord testified that he was not able to find new renters for the unit until June 1, 2013 and therefore lost \$1,100.00 for the month of May 2013, which is being claimed.

The landlord testified that he made an application for dispute resolution on May 1, 2013. The application on record showed that it was signed on May 1, 2013, but it was not received by Residential Tenancy Branch until May 9, 2013 and was officially processed effective May 9, 2013.

The landlord stated that because the tenancy ended on April 30, 2013, his application to keep the tenant's security deposit was therefore made within the 15-day deadline specified under the Act.

The tenant disputed the landlord's version of the events. The tenant testified that, although they had not yet given their written Notice to end the tenancy, the landlord was fully aware in March 2013, that they would be vacating the rental unit as evidenced by his advertising of the unit as early as March 27, 2013.

The tenant testified that, although the rent for April was paid in full, they had fully vacated the rental unit and removed all of their possessions by April 17, 2013, at which time they requested that the landlord do a move out condition inspection with them. The tenant testified that the landlord declined and did not propose an alternate date. The tenants stated that they also provided their forwarding address in writing to the landlord on April 17, 2013 and were fully moved out at that time.

The tenant testified that when the landlord refused to conduct the move out condition inspection on April 17, 2013, they therefore filled out the inspection form themselves. A copy of a move-out condition inspection report dated April 17, 2013 is in evidence.

The tenant testified that they did not want the landlord to enter the suite after they had done their final cleaning, without having their agent present, because they wanted to ensure that the suite remained in the same condition as they had left it. The tenant testified that their agent was available and prepared to do the move out condition inspection, but the landlord did not make any further attempt.

The tenant stated that the landlord was unavailable to meet until April 30, 2013 at which time the keys were returned. However, the landlord never did a move-out inspection.

The tenant's position is that, although the tenancy was ended by them before the end of the fixed term tenancy without giving notice in writing, they had physically terminated the tenancy on April 17, 2013 when they vacated the unit.

The tenant testified that the landlord was responsible for prolonging their termination date by refusing to conduct the final move out condition inspection as requested on their

final day of the tenancy and thereafter refusing to deal with the person they assigned as agent to act on their behalf.

In any case, as far as the tenants are concerned, the landlord was fully aware that they had permanently vacated the unit as of April 17, 2013 and could have arranged the move out condition inspection with their agent at any time during the period from April 17 to April 30, 2013, but did not make any diligent effort to do so.

The tenant pointed out that the landlord also had the right to access the vacant unit, whether or not it was still occupied, by giving the tenants a written notification, under the Act, that he would be entering the unit to show the premises to potential renters.

The tenants disagree with the landlord's testimony that he had applied to keep their security deposit within the 15-day deadline under the Act. The tenant pointed out that they vacated the unit as of April 17, 2013 and made the landlord aware of this fact by the tenants, who went so far as to deliver a written request that the landlord attend for the move out condition inspection while they in town on April 17, 2013.

According to the tenant, the fact that the landlord refused to meet with them or their agent to do the inspection and retrieve the keys on or shortly after April 17, 2013, did not function to extend the final termination date of their tenancy to April 30, 2013.

The tenants are claiming a refund of double the security deposit.

### **Analysis:**

#### **Loss of Revenue**

In regard to the landlord's claim for loss of income, I find it important to note that in a claim for damage or loss under the Act, the party claiming the damage or loss bears the burden of proof and the evidence furnished by the applicant must satisfy each component of the test below:

#### **Test For Damage and Loss Claims**

- [1] Proof that the damage or loss exists,
- [2] Proof that this damage or loss happened solely because of the actions or neglect of the Respondent in violation of the Act or agreement,
- [3] Verification of the actual amount required to compensate for the claimed loss or to rectify the damage, and
- [4] Proof that the claimant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage.

In this instance, the burden of proof is on the landlord, to prove the existence of the damage/loss and that it stemmed directly from a violation of the agreement or a contravention of the Act on the part of the respondent.

Section 6 of the Act states that a party can make an application seeking enforcement of the rights, obligations and prohibitions established under the Act or the tenancy agreement. Section 58 of the Act also gives a landlord or tenant the right to make an application for dispute resolution in relation to a conflict dealing with: (a) rights, obligations and prohibitions under the Act; OR (b) *rights and obligations under the terms of a tenancy agreement*. (My emphasis)

As an arbitrator, I have the authority to determine disputes about noncompliance with both the terms of the tenancy agreement and the statutory requirements imposed by the Residential Tenancy Act.

In this instance, I find that the tenant signed a fixed term tenancy agreement and violated the agreement by terminating the tenancy before the expiry date. I accept the landlord's testimony that he attempted to mitigate the loss by advertising the unit but still lost a month rent as a result. I find that the landlord is therefore entitled to be compensated in the amount of \$1,100.00.

In regard to the landlord's request to also retain the tenant's security deposit, I find that the landlord did not establish or prove further damages and losses and therefore this claim does not satisfy the test for damages and must be dismissed.

### Security Deposit

With respect to the return of the tenant's security deposit, I find that the Act states that the landlord can only retain a deposit if the tenant agrees to this in writing at the end of the tenancy. If the permission is not in written form and signed by the tenant, then the landlord has no right to keep the deposit.

However, a landlord may be able to keep the deposit to satisfy a liability or obligation of the tenant if, after the end of the tenancy, the landlord makes an application for dispute resolution and successfully obtains a monetary order to retain the amount from the deposit to compensate the landlord for proven damages or losses caused by the tenant.

The landlord must either make the application or refund the security deposit within 15 days after the tenancy had ended and the receipt of a written forwarding address.

I Although the tenant did have the right to possession of the rental unit until April 30, 2013, having paid the rent up to that date, I accept that the tenant had vacated the rental unit on April 17, 2013 and provided the landlord with their written forwarding

address on that date. I accept the testimony of the tenant that they asked the landlord to participate in the move out condition inspection. I find that the landlord declined the tenant's request for the inspection at that time and did not offer a subsequent date until April 30, 2013.

In regard to the landlord's position that, under the Act, the tenancy did not end until April 30, 2013, I find that section 44(1) of the Act states that a tenancy ends if one or more of the following applies:

(a) the tenant or landlord gives notice to end the tenancy in accordance with one of the following:

- (i) section 45 *[tenant's notice]*;
- (ii) section 46 *[landlord's notice: non-payment of rent]*;
- (iii) section 47 *[landlord's notice: cause]*;
- (iv) section 48 *[landlord's notice: end of employment]*;
- (v) section 49 *[landlord's notice: landlord's use of property]*;
- (vi) section 49.1 *[landlord's notice: tenant ceases to qualify]*;
- (vii) section 50 *[tenant may end tenancy early]*;

(b) the tenancy agreement is a fixed term tenancy agreement that provides that the tenant will vacate the rental unit on the date specified as the end of the tenancy;

(c) the landlord and tenant agree in writing to end the tenancy;

**(d) the tenant vacates or abandons the rental unit;**

(e) the tenancy agreement is frustrated;

(f) the director orders that the tenancy is ended. (My emphasis)

With respect to the landlord's testimony that he was not aware that the tenant had vacated the rental unit until April 30, 2013, I make the following findings:

- The tenant had verbally advised the landlord that they had moved and requested a move out condition inspection on June 17, 2013.
- The landlord was aware that the tenants had delegated an agent to act on their behalf after April 17, 2013 because they had relocated to another community.

- The evidence confirmed that landlord had posted an advertisement on April 24, 2013 indicating that the rental unit was vacant and available for immediate possession.

Therefore, I find as a fact that the tenancy ended as of April 17, 2013 when the tenant permanently vacated the rental unit.

Section 38(6) provides that if a landlord does not comply with the Act by refunding the deposit owed or making application to retain it within 15 days, the landlord may not make a claim against the security deposit, and must pay the tenant double the amount of the security deposit. Accordingly, I find that the tenant is entitled to be credited with \$1,100.00, representing double their security deposit.

Based on the evidence presented during these proceedings, I find that the landlord is entitled to compensation of \$1,100.00 for loss of revenue for the month of May 2011. The remainder of the landlord's monetary claim is dismissed

Based on the evidence before me, I find that the tenant is entitled to compensation of \$1,100.00 for double the \$550.00 security deposit paid by the tenant and not returned by the landlord within the 15-day deadline under the Act.

In setting off the \$1,100.00 granted to the tenant and the \$1,100.00 granted to the landlord, I find that no monetary order need be issued at this time.

I order that each party is responsible for their own costs of the applications.

### **Conclusion**

Both parties are successful in their applications. The tenant is granted monetary compensation equal to double their security deposit and the landlord is granted the same amount for loss of revenue equal to one month rent.

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 06, 2013

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Residential Tenancy Branch