



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes

MNSD, FF

### Introduction

This hearing dealt with an application by the landlord for an order to retain the security deposit in partial satisfaction of the claim. Both parties participated in the conference call hearing.

### Issue to be Decided

Is the landlord entitled to a monetary order as claimed?

### Background, Evidence and Analysis

The landlord's testimony is as follows. The tenancy began on July 1, 2013 and ended on March 31, 2014. The tenants were obligated to pay \$880.00 per month in rent in advance and at the outset of the tenancy the tenants paid a \$440.00 security deposit.

I address the landlord's claim and my findings around each as follows.

The landlord stated that the tenant breached the tenancy agreement by not fulfilling the one year term as agreed. The landlord stated that on March 1, 2014 the tenant gave notice that they would be vacating. The landlord stated that they had not agreed to end the term of the tenancy early and that the notice was late. The landlord stated that they were unable to rent the unit for April 1<sup>st</sup>. The landlord stated that they had lost a months' rent.

The tenant stated that the landlord didn't conduct condition inspection reports at move in or move out; and thus is not entitled to retain the deposit as per Section 24 of the Act. The tenant stated that they ended the tenancy early as the unit was making his family physically ill.

**Consequences for tenant and landlord if report requirements not met**

**24** (1) The right of a tenant to the return of a security deposit or a pet damage deposit, or both, is extinguished if

(a) the landlord has complied with section 23 (3) *[2 opportunities for inspection]*, and

(b) the tenant has not participated on either occasion.

(2) The right of a landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord

(a) does not comply with section 23 (3) *[2 opportunities for inspection]*,

(b) having complied with section 23 (3), does not participate on either occasion, or

(c) does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.

As the landlord did not conduct the condition inspection report as required the tenant is entitled to the return of the \$440.00 security deposit.

However, Policy Guideline 17 for Security Deposit and Set off addresses the issue before me as follows:

9. A landlord who has lost the right to claim against the security deposit for damage to the rental unit, as set out in paragraph 7, retains the following rights:

- to obtain the tenant's consent to deduct from the deposit any monies owing for other than damage to the rental unit;
- to file a claim against the deposit for any monies owing for other than damage to the rental unit;
- to deduct from the deposit an arbitrator's order outstanding at the end of the tenancy
- to file a monetary claim for damages arising out of the tenancy, including damage to the rental unit.

The landlord is still entitled to seek a monetary claim for the loss of revenue. The landlord submitted documentation for this hearing, the tenant did not. Based on the documentation provided by the landlord and after careful consideration of both parties testimony; I find that the

tenant did not give proper notice in accordance with the Act and ended the tenancy prematurely and without justification. The landlord has proven their claim for loss of revenue of \$880.00.

In this unusual and rare circumstance that both parties have successfully argued their position I apply Section 72 to “offset” each others claim. I apply the \$440.00 award of the tenants towards the landlords’ award of \$880.00 leaving an outstanding balance in favour of the landlord of \$440.00.

The landlord is also entitled to the recovery of the \$50.00 filing fee.

### Conclusion

The landlord has established a claim for \$490.00. I order that the landlord retain the deposit of \$440.00 in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of \$50.00. This order may be filed in the Small Claims Court and enforced 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: August 18, 2014

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Residential Tenancy Branch

