



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## Decision

**Dispute Codes:** MNSD, MNDC, MNR, FF

### Introduction

This Dispute Resolution hearing was convened to deal with an Application by the landlord to retain the security deposit for rent owed for the first month of the tenancy, due to the tenant ending the tenancy without proper notice under the Act.

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.

### Preliminary Issue(s)

At the commencement of the hearing the respondent /tenant, made a verbal request for an adjournment of the hearing on advice they had received.

Rule 6.1 of the Rules of Procedure states that the Residential Tenancy Branch will reschedule a dispute resolution proceeding if *“written consent from both the applicant and the respondent is received by the Residential Tenancy Branch before noon at least three (3) business days before the scheduled date for the hearing.”*

In this instance the hearing was scheduled for August 18, 2014 and no consent from the other party was obtained.

In some circumstances proceedings can be adjourned after the hearing has commenced. However, the Rules of Procedure contain a mandatory requirement that, before a determination can be made, the arbitrator must look at the oral or written submissions of the parties; consider whether the purpose for which the adjournment is sought will contribute to the resolution of the matter in accordance with the objectives set out in Rule 1 [objective and purpose]; consider whether the adjournment is required

to provide a fair opportunity for a party to be heard, including whether a party had sufficient notice of the dispute resolution proceeding; and weigh the degree to which the need for the adjournment arises out of the intentional actions or neglect of the party seeking the adjournment; and assess the possible prejudice to each party.

I find that:

- the tenant did not submit a written request at least 3 days prior to the hearing,
- the applicant was not in agreement with an adjournment,
- the tenant had approximately two months to prepare a response to the application and to submit the necessary evidence and,
- a delay would unfairly prejudice the landlord who was awaiting the disposition of the security deposit.

Accordingly, I find there is not sufficient justification under the Act and Rules of Procedure to support imposing an adjournment on the other unwilling party and the tenant's request for an adjournment was denied. The hearing proceeded as scheduled.

### **Issue(s) to be Decided**

Is the landlord entitled to compensation for loss of rent and to retain the security deposit in satisfaction of the claim?

### **Background and Evidence**

The landlord testified that the tenancy agreement was signed in late March 2014 for a tenancy that was scheduled to start on April 15, 2014. The rent was set at \$1,675.00 and a security deposit of \$825.00 was paid by the tenant.

The landlord stated that approximately a week after the tenancy agreement was signed the tenant advised the landlord that the family would not be moving into the unit at all and requested that the security deposit be refunded.

The landlord testified that they lost a month of revenue for April 2014, and are seeking to retain the tenant's security deposit.

The tenant acknowledged that they had accepted the rental unit and paid the security deposit. The tenant testified that they were told that the key would be available within days of paying the deposit. However, according to the tenant, they were not able to reach the landlord to commence their move in and their calls and messages went unanswered. The tenant testified that they had no way of knowing whether or not their move-in arrangements would be honoured and they therefore had to find other

accommodation. The tenant's position is that they are entitled to a refund of the security deposit.

### **Analysis**

I find that section 16 of the Act provides that the rights and obligations of a landlord and tenant under a tenancy agreement take effect from the date the tenancy agreement is entered into, whether or not the tenant ever occupies the rental unit.

In this instance I find that at the end of August 2014 the parties entered into a tenancy agreement which provided that the tenant would take possession on April 15, 2014 and a tenancy was formed.

I find that, after the tenancy is formed, a tenant is at liberty to terminate a tenancy but must do so in compliance with the Act.

Section 45 of the Act gives the tenant a right to end a month-to-month tenancy by giving the landlord written notice 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.

In this instance, I find that the tenant merely chose to unilaterally terminate the agreement prior to moving in and did so without adequate notice or without obtaining an order. I find that terminating the tenancy was a violation of the Act and terms of the tenancy agreement.

Section 7 of the Act states that, if a landlord or a tenant does not comply with the Act, the regulations or their tenancy agreement, the non-complying party must compensate the other for damage or loss that results.

The landlord's evidence confirms that, as a result of the tenant's violation, they incurred a loss of \$1,675.00 in revenue for the month of April 2014. However, the landlord is only seeking to retain the \$825.00 security deposit. Based on the evidence, I find that the landlord is entitled to keep the tenant's \$825.00 security deposit in satisfaction of the claim.

I find that the landlord is also entitled to a monetary order to reimburse them for the cost of the application and grant the Landlord an order against the tenant for \$50.00. This order must be served on the respondent and may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

**Conclusion**

The landlord is successful in the application and is granted an order to retain the tenant's security deposit and a monetary order for the cost of the application.

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

---

Residential Tenancy Branch

