



# Dispute Resolution Services

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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 applications from both the landlord and the tenant. The landlord's application was seeking a monetary order for unpaid rent and loss of revenue.

The tenant's cross application was for the return of the remainder of the tenant's security deposit withheld by the landlord. The tenant was also seeking a rent abatement for the loss of cable and internet services that were previously included in the tenancy.

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 for the Tenant's Application**

Is the tenant entitled to the return of the remaining security deposit pursuant to section 38 of the Act?

Is the tenant entitled to a retro-active rent abatement for devalued tenancy due to the loss of amenities previously included in the tenancy?

### **Issues to be Decided for the Landlord's Application**

Is the landlord entitled to compensation for rent owed and loss of revenue under section 7 of the Act?

### **Background and Evidence**

The tenancy began in May 2011. The rent was \$750.00 per month. A security deposit of \$375.00 was paid.

The landlord testified that the tenancy was terminated by the tenant without notice on April 30, 2014 and the tenant was refunded part of the security deposit in the amount of \$275.00. The landlord testified that the landlord retained \$100.00 of the tenant's security deposit because the tenant had only paid \$650.00 rent for April 2014, instead of \$750.00.

The tenant testified that there were several discussions about the tenant's intention to move out and even discussions about the rent reduction for the loss of cable and internet services, that had been disconnected when the landlord's associate moved out of the upper unit.

The tenant pointed out that, when she paid the reduced rent for the final month on April 1, 2014, the landlord did not take issue with the payment of \$650.00 at all.

The tenant testified that it was only when the landlord gave her the \$275.00 cheque for the damage deposit refund a month later, on May 4, 2014, that the tenant was surprised to discover that the landlord was charging full rent for April, despite the loss of cable and internet.

The tenant feels that she is entitled to be compensated double the \$100.00 withheld by the landlord.

The landlord pointed out that cable and internet services were never part of the tenancy and were only available as the landlord's former associate who lived upstairs allowed the tenant to access the services without charge. The landlord's position is that the tenant had no right to deduct the \$100.00 from her rent in the first place.

The landlord is also claiming loss of \$750.00 rent for the month of May 2014. The landlord testified that the tenant never provided the required one-month written notice to vacate and, as a result, the unit was not re-rented during May 2014 and remained vacant.

The tenant testified that she did provide written notice posted on the door of the landlord's associate upstairs. A copy of the Notice is in evidence. The tenant testified that she believed that this was service to the landlord through her agent on site.

The landlord denied ever getting the Notice and pointed out that her former associate living in the upper portion of the building was not the landlord's agent and never handled rent payments or other duties besides maintenance and repairs.

## Analysis – Landlord's Monetary Claim

### Rent Owed

I find that section 26 of the Act requires that rent must be paid when it is due. I find that the tenants did not pay the rent in full on April 1, 2014.

In this instance, I find that the tenant chose to reduce the rent by \$100.00 due to the loss of services that she enjoyed as part of the tenancy for no extra cost. I accept that the provision of cable and internet were enforceable terms of the tenancy.

Section 27 of the Act states that a service or facility, other than an essential or material service, may be restricted or terminated provided that the landlord

(a) gives 30 days' written notice, in the approved form, of the termination or restriction, and

(b) reduces the rent in an amount that is equivalent to the reduction in the value of the tenancy agreement resulting from the termination or restriction of the service or facility. (my emphasis)

In this instance, although the tenant arbitrarily reduced her rent payment, which may be seen as a violation of the Act or agreement, I find that the landlord had not complied with the Act by giving the tenant notice that the cable and internet would no longer be available. I find that the value of the services terminated for the month of April were \$100.00 and this is the amount that the rent would have been reduced had the landlord followed section 27 of the Act..

For this reason, I find that the landlord is not entitled to be compensated \$100.00 for the shortfall in rent.

### Loss of Revenue

With respect to the loss of rent for May 2014, I find that a tenant is required to provide written notice to the landlord one month in advance of vacating.

An Applicant's right to claim damages from another party is covered by section 7 of the Act which states that if a landlord or tenant fails to comply with the Act, the regulations or tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results. Section 67 of the Act grants a Dispute Resolution Officer authority to determine the amount and order payment under the circumstances.

It is important to note that in an application seeking compensation for damages or loss under the Act, the party making the claim 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 that all elements of the test for damages are satisfied.

In regard to the issue of whether or not the tenant committed a violation of the Act, I find that a tenant's notice to end the tenancy, is covered by section 45(1) of the Act. This section of the Act permits a tenant to end a month-to-month tenancy by giving the landlord written 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.

On a balance of probabilities, I find that the landlord knew that the tenant would be vacating, either based on the written notice posted on the door of the upper unit, or, more likely, through the discussions between the tenant and the landlord near the end of the tenancy.

In regard to the landlord's monetary claim for loss of revenue, I find that the landlord has not sufficiently satisfied element 4 of the test for damages to justify the claim for loss of rent by submitting documentary evidence to show that they commenced advertising for another tenant and started showing the unit to potential renters at the earliest opportunity, once it was established that the tenant would be vacating.

I find that the landlord did not submit any copies of the ads or communications with prospective renters, to prove that the landlord made reasonable efforts to mitigate the loss by marketing the unit.

Accordingly, I find that that the portion of the landlord's application seeking loss of revenue for the month of May 2014, must be dismissed.

#### Tenant's Claim for the Security Deposit

With respect to the return of the security deposit, I find that section 38 of the Act states that within 15 days after the later of the day the tenancy ends, and the date the landlord receives the tenant's forwarding address in writing, the landlord must either repay the security deposit to the tenant with interest, or make an application for dispute resolution claiming against the security deposit.

In this instance, I find that the landlord did not refund all of the security deposit within the required 15 days from the end of the tenancy. I find that the landlord kept \$100.00 of the deposit beyond the 15 day deadline without making an application to keep it. I find that the tenant is therefore entitled to a refund of double the amount of the security deposit retained beyond 15 days, amounting to a refund of \$200.00.

I find that the landlord has already refunded the remaining \$250.00 of the security deposit within the 15-day deadline.

Given the above, I find that the tenant is entitled to total monetary compensation of \$200.00.

Based on the evidence before me I find that the landlord is not entitled to monetary compensation for rent owed or loss of revenue.

I find that the tenant is entitled to a monetary order of \$200.00 representing double the portion of the security deposit retained by the landlord beyond the 15-day deadline.

I hereby grant a monetary order in favour of the tenant for \$200.00. This order must be served on the Respondent and may be filed in the Supreme Court, (Small Claims), and enforced as an order of that Court.

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

**Conclusion**

The tenant is successful in their application and is granted a refund of double the portion of the security deposit retained by the landlord. The landlord is not successful in the application and their monetary claim is dismissed without leave to reapply.

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: September 16, 2014

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Residential Tenancy Branch

