



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

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

### **Introduction**

This hearing dealt with an application by the tenant pursuant to the *Residential Tenancy Act* for a monetary order for the return of rent, security deposit and for the filing fee.

The tenant testified that she served the landlord with the hearing package on June 19, 2014, by registered mail, to the service address provided by the landlord on the tenancy agreement. The package was returned as unclaimed. The tenant filed a copy of the tracking slip. The landlord did not attend the hearing. Based on the testimony and evidence of the tenant I find that service of the hearing document, by the tenant to the landlord, was done in accordance with section 88 of the *Residential Tenancy Act*. The tenant attended the hearing and was given full opportunity to present evidence and make submissions.

### **Issues to be decided**

Is the tenant entitled to the return of rent, security deposit and the filing fee?

### **Background and Evidence**

On April 11, 2014, the parties entered into a fixed term tenancy agreement with an effective start date of May 01, 2014 and an end date of April 30, 2016. The rent was set at \$2,600.00 due on the first of each month.

The tenant was living overseas at the time the agreement was entered into. The landlord requested that the security deposit equal to one month's rent and rent for the first and last month of the tenancy be paid at the time the tenancy agreement was signed. The tenant testified that she obliged by depositing the amount of \$7,800.00 into the landlord's account after he sent her a void cheque which contained the information that she required to make the deposit.

The tenant arrived into Canada on May 01, 2014 and proceeded to the rental unit to meet the landlord.

The tenant stated that upon arrival she found that the appliances were not yet installed, there were some exposed wires coming out of the ceiling and that there was furniture present inside the rental unit. The tenant also testified that the unit had construction material left outside and no window coverings.

The landlord informed the tenant that he was given to understand that the tenant would move in on May 02 and accordingly he informed the tenants that the unit would be fully finished the next day. The tenant left the unit and stayed at her parent's home. The tenant testified that she sent the landlord an email later that day to inform him that she would not be renting the unit.

The parties had a phone conversation the next day and the landlord informed the tenant that the unit was fully finished. The tenant reminded the landlord that she was no longer interested in renting the unit and requested the return of \$7,800.00. The tenant sent the landlord a forwarding address on May 12, 2014 in writing for the return of rent and security deposit and did not hear back from the landlord.

### **Analysis**

Based on these facts and pursuant to section 16 of the *Residential Tenancy Act*, I find that the landlord and tenant had entered into a binding tenancy agreement when they signed a contract on April 11, 2014. Section 16 of the *Act* states that the rights and obligations of a landlord and tenant take effect from the date the tenancy agreement is entered into, whether or not the tenant ever occupies the rental unit.

In this case, the tenant entered into a fixed term tenancy agreement that was supposed to start on May 01, 2014. The rental unit was not fully finished on May 01, but the tenant could have moved in and given the landlord an opportunity to finish the rental unit. I find that by informing the landlord on May 01, 2014 that the tenant would not be renting the unit probably resulted in a loss of income to the landlord for the month of May.

*Residential Tenancy Policy Guideline #3* states that the damages awarded are an amount sufficient to put the landlord in the same position as if the tenant had not breached the agreement. As a general rule, this includes compensating the landlord for any loss of rent up to the earliest time that the tenant could legally have ended the tenancy. Therefore by providing notice to end the tenancy on May 01, I find that the tenant is not entitled to the return of rent for May 2014 in the amount of \$2,600.00.

The tenant is entitled to the return of rent that she paid for the last month of tenancy in the amount of \$2,600.00.

Section 38(1) of the Act provides that the landlord must return the security deposit or apply for dispute resolution within 15 days after the later of the end of the tenancy and the date the forwarding address is received in writing. If the landlord fails to repay the security deposit or make an application for dispute resolution within 15 days of receiving the tenant's forwarding address, the landlord is liable under section 38(6), which provides that the landlord must pay the tenant double the amount of the deposit.

In this case, the tenant provided the landlord with her forwarding address on May 12, 2014. The landlord did not return the deposit or make application to keep it. Since the landlord did not return the security deposit to the tenant, did not apply to retain the deposit and did not attend the hearing despite having been served with the tenant's application, I find that the tenant is entitled to the return of double the security deposit. Therefore, the landlord is liable under section 38(6), which provides that the landlord must pay the tenant double the amount of the security deposit.

The landlord currently holds a security deposit of \$2,600.00 and is obligated under section 38 to return double this amount along with the accrued interest of \$0.00.

Overall the tenant has established a claim of \$2,600.00 for the return of rent for the last month of tenancy and \$5,200.00 for the return of double the security deposit for a total of \$7,800.00. Since the tenant has proven her claim, I award her the recovery of the filing fee of \$100.00. I grant the tenant an order under section 67 of the *Residential Tenancy Act* for the amount of \$7,900.00. This order may be filed in the Small Claims Court and enforced as an order of that Court.

### **Conclusion**

I grant the tenant a monetary order in the amount of **\$7,900.00**.

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: October 17, 2014

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Residential Tenancy Branch

