



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding PLAN A REAL ESTATE SERVICES LTD.  
and [tenant name suppressed to protect privacy]

## **DECISION**

### **Dispute Codes:**

MNDC, MNSD, FF

### **Introduction**

This hearing was convened in response to cross applications by the parties. The landlord applied for a Monetary Order loss of revenue and to retain the security deposit in partial satisfaction of the claim. The tenant applied for a Monetary Order for the return of their security deposit. Both parties requested recovery of the filing fee associated with their application.

Both parties participated in the hearing with their submissions, document evidence and testimony during the hearing. The landlord was represented by an agent of the landlord. The parties acknowledged receiving the evidence of the other. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

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

Is the landlord entitled to the monetary amount claimed for loss of revenue due to the tenant's non-compliance with the Act, regulations or tenancy agreement?

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

### **Background and Evidence**

The relevant and undisputed evidence in this matter is as follows. On May 10, 2014 the tenant responded to an on-line advertisement for the rental unit on Craigslist, from their Ontario location. The landlord requested the tenant to forward a deposit to secure the rental unit which the tenant sent by e-transfer on May 10, 2014. Upon additional correspondence between the parties the tenant was requested to send the balance of

the security deposit of \$400.00 on a rental unit with a payable monthly rent of \$1300.00, which the landlord received by e-transfer. After which, the landlord sent the tenant a tenancy agreement by e-mail the same day for the tenant to complete with their signature. The tenant reviewed the tenancy agreement document, intended to start the tenancy June 01, 2014 and was not satisfied with a term in the addendum of the intended agreement respecting a cleaning charge of \$100.00 at the end of the tenancy. As a result, the tenant declined to advance the tenancy agreement and requested the return of their security deposit, and provided their forwarding address, on June 04, 2014. The tenant relies on Section 20(a) of the Act which states that a landlord must not require a security deposit at any time other than when the landlord and tenant enter into the tenancy agreement.

The landlord's agent testified that they were not intimate with all that was communicated between the parties as the agent responsible for all of the communications was no longer with the corporate landlord. None the less, the landlord provided that their operating policy was followed in order for the landlord to provide a valid signed tenancy agreement to the tenant for their signature. The tenant decided not to occupy the rental unit and as a result the landlord claims they were not able to re-rent the unit until June 20, 2014, for which the landlord claims loss of revenue for 19 days in the amount of \$823.33.

### **Analysis**

On the preponderance of the evidence of the landlord and tenant I have reached a Decision. In this matter the parties each have the burden of proving their respective claims, *on the balance of probabilities*.

**Section 16** of The Act states as follows:

#### **Start of rights and obligations under tenancy agreement**

- 16.** 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.

I find that in this matter, a tenancy existed between the parties upon them entering into an *oral agreement* for the tenant to rent the subject unit at \$1300.00 per month, and the landlord collecting the requisite security deposit of \$650.00. I find that the parties' respective rights and obligations under the Act came into full force on May 16, 2014 when the tenant provided the required security deposit for the rental unit in its entirety.

I find that the landlord did not require a security deposit at a time other than when the parties agreed on the tenant renting the subject unit. Therefore, I find that the landlord did not breach the Act by their conduct in this matter in requesting the security deposit.

As a result of all the above, I find the tenant was responsible for the rent as of June 01, 2014.

The landlord claims they were able to re-rent the unit June 20, 2014, however, have not provided conclusive evidence for this claim other than an e-mail dated June 04, 2014 requesting of the tenant if they knew of anyone interested in moving into the unit.

On the *balance of probabilities*, I grant the landlord loss of revenue limited to one half month's rent for the period June 01 to June 15, 2014 in the amount of **\$650.00**. As the landlord was partly successful in their claim they are entitled to recover their filing fee.

As a result of the above the tenant's application effectively **is dismissed**.

The security deposit will be off-set from the award made herein.

***Calculation for Monetary Order***

|   |                |
|---|----------------|
| Loss of revenue                         | \$650.00       |
| Landlord's Filing Fee                   | \$50.00        |
| <i>Less Security Deposit</i>            | - \$650.00     |
| <b>Total Monetary Award to landlord</b> | <b>\$50.00</b> |

**Conclusion**

**I Order** that the landlord retain the security deposit of \$650.00 in partial satisfaction of the claim and I grant the landlord an Order under Section 67 of the Act for the balance due of **\$50.00**. If necessary, this Order may be filed in the Small Claims Court and enforced as an Order of that Court.

**This Decision is final and binding on both parties.**

*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 27, 2014

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Residential Tenancy Branch

