



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes:

**MNSD, MNR, FF**

### Introduction

This was a cross-application hearing.

This hearing was scheduled in response to the tenant's application made on January 27, 2015 in which the tenant has requested return of a security deposit and to recover the filing fee from the landlord for the cost of this Application for Dispute Resolution.

On February 2, 2015 the landlord applied requesting compensation for unpaid rent, to retain the security deposit and to recover the filing fee cost from the tenant.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the relevant evidence and testimony provided.

### Issue(s) to be Decided

Is the tenant entitled to return of a \$250.00 deposit paid to the landlord?

Is the landlord entitled to compensation for the loss of 1 month's rent in the sum of \$1,325.00?

### Background and Evidence

The parties agreed that they first met at the rental unit on January 3, 2015. The tenant responded to an advertisement on a popular web site, advertising the home for rent.

During the initial meeting the tenant asked if she could make a payment to the landlord, as a first right of refusal. The landlord said she was unfamiliar with this type of payment but after discussing it with her spouse, decided they would accept the payment. The

tenant said she wished to make this payment as she had missed the opportunity to obtain other rentals, even though she was the first to view them. This payment would allow the tenant to be the first to be offered the unit.

The parties agreed that on January 3, 2015 the tenant made a payment in the sum of \$250.00. The tenant wrote the receipt, which the landlord signed. A copy of the receipt supplied as evidence stated:

*"Received from S.L. \$250.00 as deposit prior to rental agreement."*

The landlord said that she then began to check the tenant's references in the expectation a tenancy could commence on January 15, 2015. The landlord confirmed that if the references had not been positive they would not rent to the tenant.

After meeting the tenant on January 3, 2015 the landlord removed their rental advertisement from the web site as they were confident that the tenant would be found to be suitable.

Copies of email communication between the parties were supplied as evidence.

The landlord and tenant agreed that on January 9, 2015 the landlord offered a rental application to the tenant via an email. Within the hour the tenant replied, informing the landlord that she planned on continuing her search for a different rental.

On January 10, 2015, after the tenant declined to pursue the tenancy that would have commenced on January 15, 2015, the landlord re-listed the home on a popular web site. They located new occupants effective February 1, 2015.

On January 14, 2015 the landlord emailed the tenant to explain that they were not in the habit of taking a deposit to hold a property. The landlord completed some research and determined the deposit would only be refundable if the landlord decided not to rent to her. The landlord also determined that if S.L. failed to agree to move in, the deposit could be applied as compensation for the 6 days between the time they had first met and when the tenant informed the landlord she would not occupy the unit.

The tenant responded that the information the landlord had used, from the U.K., was not applicable in Canada. The tenant said the payment was for first right of refusal and that the property had not been ready to rent during the 6 day period of time due to repairs and cleaning.

The landlord applied requesting compensation as they have been told they should be entitled to a loss of rent as a result of the tenant's refusal to move into the rental unit.

## Analysis

When making a claim for damages under a tenancy agreement or the Act, the party making the allegations has the burden of proving their claim. Proving a claim in damages requires that it be established that the damage or loss occurred, that the damage or loss was a result of a breach of the tenancy agreement or Act, verification of the actual loss or damage claimed and proof that the party took all reasonable measures to mitigate their loss.

Before considering the landlord's claim for unpaid rent or loss of rent revenue, I have assessed the nature of the payment made on January 3, 2015 to determine if that payment created a tenancy agreement.

Section 15 of the Act provides:

### ***Application and processing fees prohibited***

- 15** *A landlord must not charge a person anything for*
- (a) accepting an application for a tenancy,*
  - (b) processing the application,*
  - (c) investigating the applicant's suitability as a tenant, or*
  - (d) accepting the person as a tenant.*

The parties confirmed that the payment made to the landlord on January 3, 2015 was made at the behest of the tenant. I accept the landlord's testimony that they are not in the habit of charging a fee prior to the start of a tenancy, but in this case they did accept the payment.

Section 17 of the Act allows a landlord to accept a security deposit as a condition of entering into a tenancy agreement. From the evidence before me I find, on the balance of probabilities, that the payment made on January 3, 2015 was not a security deposit. I find that the payment formed some sort of agreement between the parties, acknowledging that S.L., if she met with the approval of the landlord, would then be accepted as a tenant. I find this would place the \$250.00 payment in the realm of a fee paid while the tenant's suitability as a tenant was investigated.

I find that on January 3, 2015 there was no firm understanding between the parties that a tenancy agreement had been established. I base this decision on the landlord's testimony confirming the plan to reject the tenant should her references not be positive; even though the landlord was optimistic there would not be any issues. The receipt also indicated that the payment was made "prior to" a rental agreement; further pointing to payment of a fee vs. security deposit. Without a meeting of the minds on January 3, 2015, that the payment made was in fact meant as a security deposit to confirm a tenancy agreement; I find that a tenancy agreement was not established.

Residential Tenancy Branch (RTB) policy (#27) suggests that the Act does not confer upon the RTB the authority to hear all disputes regarding every type of relationship

between parties. Jurisdiction can only be established over a landlord/tenant relationship. I find this policy takes a reasonable stance. Therefore, in the absence of a tenancy agreement I find that this dispute may not be decided and jurisdiction is declined.

Conclusion

Jurisdiction is declined.

This decision is final and binding and 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: February 20, 2015

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Residential Tenancy Branch

