



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNSD, FF

### Introduction

This hearing was convened in relation to the tenant's application for return of double her security deposit.

The tenant appeared. The landlord's husband and co-landlord appeared (the agent).

The tenant testified that she had an acquaintance personally serve the landlord with the dispute resolution package and accompanying evidence on 9 August 2014. The agent confirmed that he had copies of the tenant's dispute resolution package and evidence. On the basis of this evidence, I am satisfied that the landlord was served with notice of this application pursuant to section 89 of the *Residential Tenancy Act* (the Act).

In the course of the hearing I asked the parties to clarify my understanding of the following:

- acceptance of evidence (tenant's letter providing forwarding address) after the hearing;
- sufficiency of tenant's notice to end tenancy by email in respect of content, notice period and service;
- tenant's waiver over the security deposit by email to compensate the landlord for July's rent;
- sufficiency of 10 Day Notice to End Tenancy for Unpaid Rent, which was provided by email and not in the prescribed form; and
- sufficiency of service to the landlords of the tenant's forwarding address by registered mail that was returned as it was delivered to an address at which the landlords were not currently living as they were on vacation.

### Preliminary Issue – Identity of Applicant

At the commencement of the hearing the agent raised his concern that the tenant's name for the purposes of this application is different than the tenant's name that she gave for the purposes of entering into the tenancy agreement.

The tenant reported that she had sent notification of her name change to the landlord in or about July 2014. The tenant testified that she had changed her name for personal reasons that relate to a family status change.

I asked the agent if he accepted that the person appearing at the hearing was the person with whom he had entered into a tenancy agreement. The agent agreed that they were the same person.

On this basis, I proceeded with the application.

### Background and Evidence

This tenancy began 15 December 2014. The tenancy ended on or about 8 July 2014. Monthly rent was \$725.00 and was due on the first of the month. The tenant remitted a security deposit to the landlord in the amount of \$362.50.

On 28 June 2014, the tenant sent an email to the landlord stating that she would be vacating the property on 15 July 2014.

On 30 June 2014, the landlord asked the tenant when she would like to do the move out condition inspection report. The agent testified that the tenant did not respond to this email.

On 1 July 2014, the tenant sent an email to the landlord stating that she would be unable to pay full rent for July. The tenant asked that the landlord apply her security deposit to the rent arrears.

On 2 July 2014, the landlord sent an email to the tenant:

*The full months rent is due and payable as of yesterday. You are hereby given 10 days notice to vacate as of July 12<sup>th</sup> unless we receive the rent, in full, within five days.*

The agent testified that the landlord did not provide the tenant with a 10 Day Notice in the prescribed form.

The tenant testified that she attempted to pay as much of her rent as she could. On 2 July 2014, the tenant sent an electronic transfer to the landlord in the amount of \$11.47. The tenant testified that the landlord accepted the transfer on 27 July 2014.

The tenant testified that she moved from the rental unit on 8 July 2014.

On 9 July 2014, the tenant sent her forwarding address to the landlord by registered mail. I was provided with a copy of the mailing receipt, but not a copy of the letter. The tenant and agent both testified that the letter was returned to sender. The agent testified that the first time he received the mailing was with the dispute resolution package. The agent testified that the tenant knew that the landlord would be unable to get the letter because she was on vacation. The tenant testified that she did not know this.

The tenant provided me with two receipts in relation to repairs for which she sought reimbursement from the landlord.

The agent testified that the tenant has \$351.03 in rental arrears for July:

Item	Amount
July Rent	\$725.00
Rent Payment	-11.47
Retained Security Deposit	-362.50
<b>July Rent Arrears</b>	<b>\$351.03</b>

The tenant testified that when she left the rental unit, she left her bicycle in a storage area.

### Analysis

Pursuant to section 63 of the Act, an arbitrator may assist the parties to settle their dispute and if the parties settle their dispute during the dispute resolution proceedings, the settlement may be recorded in the form of a decision or an order. During the hearing the parties discussed the issues between them, engaged in a conversation, turned their minds to compromise and achieved a resolution of their dispute.

During this hearing, the parties reached an agreement to settle their dispute under the following final and binding terms:

1. The tenant agreed to withdraw her application.

2. The landlord agreed to abandon any claims against the tenant regarding unpaid rent or rental losses arising from this tenancy and further agreed to not initiate any new claims against the tenant.
3. The tenant agreed the landlord could retain the tenant's security deposit.
4. The landlord agreed to return any of the tenant's personal property that remained in the landlord's possession.
5. The landlord agreed to pay to the tenant \$11.47.

The parties agreed that these particulars comprise the full and final settlement of all aspects of their disputes for both parties.

I note that the tenant reported she had received information that her notice to end tenancy by email was sufficient. I referred the tenant to section 45 of the Act, which is reproduced in part for ease of reference:

- 45** (1) A tenant may end a periodic tenancy by giving the landlord 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....
- (4) A notice to end a tenancy given under this section must comply with section 52 [*form and content of notice to end tenancy*].

In addition, section 52 may be of use to the tenant:

- 52** In order to be effective, a notice to end a tenancy must be in writing and must
- (a) be signed and dated by the landlord or tenant giving the notice,
  - (b) give the address of the rental unit,
  - (c) state the effective date of the notice,...

Conclusion

The tenant's application is withdrawn.

The monetary order provided to the tenant is to be used if the landlord does not pay \$11.47 to the tenant in accordance with their agreement. The tenant is provided with this order in the above terms and the tenant may serve the landlord with this order so that it may enforce it in the event that the landlord does not pay the outstanding amount as set out in their agreement. Should the landlord(s) fail to comply with these orders, these orders may be filed in the Small Claims Division of the Provincial Court and enforced as orders of that Court.

To implement the settlement agreement between the parties, I order the landlord to return any and all of the tenant's personal property within the landlord's possession to the tenant forthwith.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under subsection 9.1(1) of the Act.

Dated: February 20, 2015

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Residential Tenancy Branch

