



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      aat, ff, lat, mnsd, opt, mndc, mnrr

### Introduction

The tenant applies for a variety of orders including access to the premises, a tenant's order of possession, the right to change the locks to the premises, recovery of his deposits, and an order ending the tenancy. At the hearing the tenant also requested the recovery of all rents paid to the landlord.

The landlord applies for an order for loss of rental income for March, and for an order to retain the tenant's deposits.

### Issue(s) to be Decided

At the hearing, the tenant effectively withdrew most of his claim. The key issue for the tenant is to fully recovery all deposits and rent paid to the landlord, as well as to recover his filing fee.

The landlord has already sent a cheque to the tenant. He seeks confirmation that no further sum is owed.

### Background and Evidence

The tenant's testimony and evidence is as follows:

After viewing the suite, on February 17, 2015 the tenant's girlfriend paid the landlord a security deposit and pet damage deposit to hold the suite. The tenant confirmed orally at the end of February that he intended to rent the suite, but did not sign an agreement or pay rent. On March 4, 2015 he sent the landlord the sum of \$1,000.00 representing rent for March, by way of Email Money Transfer. The tenant requested, but never received the keys. The landlord rented out the premises for a portion March to other tenants, and denied the right of access to the tenant.

The landlord's testimony and evidence is as follows:

The rental unit is a furnished suite, and the rent includes utilities. The landlord initially wanted a longer term tenancy, but agreed to a monthly tenancy with the tenant. The tenant advised he had money problems, and that he would often be away from the premises. The landlord offered to find short term (daily) renters for periods when the tenant was not there, and the tenant agreed. The landlord in fact secured a number of short term day-by-day tenants for March. He received no rent from the tenant until March 4, and after holding the tenant's rent for several days, he deposited the tenant's rent payment and decided to decline any further reservations for short term renters. The

landlord never denied possession to the tenant, rather the tenant never came to get the key.

On March 10, the tenant told him he wanted to back out of the tenancy. The landlord agreed, but on the condition that he keep \$500.00 (half of the rent for March).

The landlord was able to rent out the premises for a total of 16 days in March, and received compensation of \$780.00. He feels it is fair to be paid half a month's rent from the tenant. He recently sent a \$1,450.00 cheque to the tenant, representing the return of both deposits and half of the rent paid, less his \$50.00 filing fee.

### Analysis

An agreement between a landlord and tenant requires a meeting of the minds as to certain fundamental terms of the tenancy agreement, including but not limited to the date the tenancy begins, whether the tenancy is month-to-month or for a fixed term, the amount of rent payable, the date rent is due, and the amount of any deposits. In this case, both parties were trying at times to form a tenancy agreement, but full agreement as between them to these fundamental terms were never completely realized. Further, no written agreement was entered into, even though that is a requirement under the Residential Tenancy Act and Regulations. The absence of a written agreement makes the resolution of disagreements such as this one difficult, as it becomes hard to determine the actual terms of the agreement, if in fact there was an agreement.

One hallmark of a residency tenancy agreement is that exclusive possession is granted to the tenant at the start of the tenancy. It is argued by the tenant that the tenancy commenced March 1. In fact however, the tenant had paid no rent on or before March 1, and had neither taken or accepted possession of the premises at that point. Two days earlier he had advised the landlord he would be away for most of the next 2 weeks, and agreed the landlord could rent out the premises on days he was not around. I therefore find that no tenancy agreement existed yet on March 1. On March 3, the landlord offered to rent the premises to the tenant on a daily basis, but on March 4 the tenant effectively reinstated his offer to rent on a month-to-month basis, through the electronic advance of \$1,000.00 rent for the month of March. This offer was accepted by the landlord when he deposited the cheque on March 8. Given that there was now a payment of the deposits, payment of rent, and an understanding that the tenancy was monthly, I find that sufficient fundamental terms existed to confirm that a tenancy agreement was in place as of March 8, 2015.

Two days later, however, the tenant provided an email that he no longer wanted to rent the premises. Given my finding that a month-to-month tenancy was confirmed by this time, by virtue of section 45 of the Residential Tenancy Act this notice was effective to end the tenancy on April 30, 2015. Notably however, no loss of rent for April is alleged by the landlord, and at issue therefore is the rental obligation of the tenant for March.

The landlord immediately wrote back to the tenant, offering to end the agreement on the condition that he keep half of the tenant's rent for March. The tenant did not accept that offer, taking the position that no tenancy agreement had ever been confirmed. His application for dispute resolution however, sought a tenants' order for possession of the premises, suggesting that as of March 17, the tenant felt the tenancy was still continuing.

Ultimately, what I am asked to decide is whether the tenant owes rent to the landlord for March, and if so, how much. A factor I must consider in the circumstances is the effect of section 7(2)

of the Residential Tenancy Act which requires that a party who suffers damages must take reasonable steps to minimize their damages. In this case, the damages claimed by the landlord are his loss of rent for March. In fact the landlord was able to minimize his damage by accepting rents from other short term tenants. There was time and energy required to clean after each of these tenants, and I accept as reasonable that the net rental income received by the landlord for March was \$780.00. This leaves a shortfall of \$220.00. I find that the landlord's actual loss of rental income for March is this sum, and the tenant is liable to the landlord for this sum together with the landlord's filing fee of \$50.00, for a total owed to the landlord by the tenant of \$270.00. When deducted from the actual \$1,000.00 payment of March rent, this leaves \$730.00 that should have been returned by the landlord to the tenant.

The tenant abandoned the majority of the claims he applied for, and by virtue of the landlord's mitigation in fact will recover much of the rent paid for March. The landlord has already returned the full deposits. I therefore find no basis upon which to award recovery of the tenant's filing fee.

The landlord has returned the sum of \$1,450.00 to the tenant, which includes the return of the tenant's deposit of \$1,000.00 as well as a further \$450.00. In fact what should have been returned to the tenant was \$730.00, as noted above. The difference (\$730.00 - \$450.00) is \$280.00. This sum is now ordered paid by the landlord to the tenant.

#### Conclusion

The landlord shall pay to the tenant the sum of \$280.00.

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: April 23, 2015

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Residential Tenancy Branch

