



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Remax Little Oak Realty  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNSD, FF

### Introduction

This hearing was convened in response to an application by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. A Monetary Order for unpaid rent - Section 67;
2. A Monetary Order for compensation for loss – Section 67;
3. An Order to retain the security deposit - Section 38; and
4. An Order to recover the filing fee for this application - Section 72.

The Tenant did not appear at the hearing. I accept the Landlord’s evidence that the Tenant was served with the application for dispute resolution and notice of hearing by registered mail in accordance with Section 89 of the Act. The Landlord was given full opportunity to be heard, to present evidence and to make submissions.

### Issue(s) to be Decided

Is the Landlord entitled to retain the security deposit?

Is the Landlord entitled to recovery of the filing fee?

### Background and Evidence

The tenancy started on July 1, 2014 with rent of \$1,400.00 payable monthly.

The Tenant gave no notice to end the tenancy having informed the Landlord on September 3, 2015 that they had moved out of the unit on August 30, 2014.

The Landlord provided evidence of a previous Decision, dated September 9, 2014 that deals with the end of the tenancy due to the presence of mold and awards compensation to the Tenants. The Landlord confirms the finding contained in the Decision that the Tenant was “forced to move due to the mould and health issues”. The Landlord states that the unit was remediated over September and October 2014 during which the unit could not be lived in. The Landlord advertised the unit on September 15, 2014 on internet sites at the same rental rate. The unit was rented for December 1, 2014 but the new tenants moved in on November 15, 2014. The Landlord confirms that the previous Decision resulted in the Landlord currently holding a security deposit of \$424.99 and that Landlord claims retention of this amount on the basis that the Tenant did not provide sufficient notice to end the tenancy.

### Analysis

Section 77 of the Act provides that a decision is final and binding. The previous Decision finds that the end of the tenancy was not caused by the Tenant’s actions. I may not disturb this finding.

Section 38 of the Act provides that an application may be made to claim against a security deposit. In a claim for damage or loss under the Act, regulation or tenancy agreement, the claiming party must prove, inter alia, that the damage or loss claimed was caused by the actions or neglect of the responding party. As it has already been found that the tenancy did not end due to any act of the Tenant, any losses flowing from the end of the tenancy cannot be said to have been caused by the Tenant, regardless of notice. I also consider the Landlord’s own evidence of the unit being remediated for two months after the tenancy ended. Based on the Landlord’s own evidence I find that the Landlord has provided no basis to hold the Tenant responsible for any loss of rental income. As the Landlord has no valid claim against the Tenant, I find that the Landlord may not retain the security deposit and I order the Landlord to return **\$424.99** to the Tenant forthwith.

Conclusion

The Landlord's application is dismissed. I grant the Tenant an order under Section 67 of the Act for **\$424.00**. If necessary, this order may be filed in the Small Claims Court and enforced as an order of that Court.

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 30, 2015

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Residential Tenancy Branch

