



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNSD, FF

### Introduction

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

I find that the Application for Dispute Resolution/Notice of Hearing was sufficiently served on the landlord. With respect to each of the applicant's claims I find as follows:

### Issue(s) to be Decided

The issue to be decided is whether the tenants are entitled to a monetary order and if so how much?

### Background and Evidence

Much of the evidence is in conflict. The tenants testified the landlord agreed to rent the rental unit to them for rent of \$800 per month and a security deposit of \$400. They produced a form from the Ministry supporting this testimony. The tenants later testified the Ministry paid those sums.

The landlord disputes this evidence. He testified he signed the form from the Ministry but that was to assist the tenant's in getting funding from the Ministry. At the time he

signed it the form did not include the amount of rent. The tenants were to pay additional rent over and above what was paid by the Ministry.

The landlord further produced a tenancy agreement in writing the states the rent was "\$1000 per month payable in advance on or before occupancy and thereafter in advance on the first day of the month." The agreement also indicated the rental deposit was \$500 before taking occupancy. The landlord testified he received a cheque from the Ministry in the sum of \$400 for the deposit and \$585 for the rent. The tenants acknowledged that the amount paid by the Ministry was the amount stated by the landlord and not \$1200.

The landlord demanded the tenants pay the arrears. The tenants testified they removed all of their belongings by February 8, 2015. The landlord testified the belongings were not removed until February 15, 2015. The landlord was not able to re-rent the rental unit for February.

Analysis:

After hearing the disputed evidence I determined the agreement provided that the rent was to be \$1000 per month payable in advance and the security deposit was \$500. This is consistent with the written agreement produced by the landlord which was signed by both tenants. I further determined that the Ministry paid rent of \$585. Thus the tenants owe outstanding rent for February in the sum of \$415.

With regard to each of the tenants' claims I find as follows:

- a. I dismissed the tenants' claim of \$585 for reimbursement of the partial payment of rent for February. The tenants were in breach of the tenancy agreement in failing to pay all of the rent for February. The landlord was within his rights when he served the 10 day Notice to End Tenancy on the Tenants.
- b. The tenants seek an order for the return of the security deposit held by the landlord in the sum of \$400.

The Residential Tenancy Act provides that a landlord must return the security deposit plus interest to the tenants within 15 days of the later of the date the tenancy ends or the date the landlord receives the tenants forwarding address in writing unless the parties have agreed in writing that the landlord can retain the security deposit, the landlord already has a monetary order against the tenants or the landlord files an Application for Dispute Resolution within that 15 day period. It further provides that if the landlord fails to do this the tenant is entitled to an order for double the security deposit.

The Ministry on behalf of the tenants paid a security deposit of \$400 at the beginning of February 2015. I determined the tenancy ended sometime between February 7, 2015 (according to the tenant) and February 15, 2015 (according to the landlord). I further determined the tenants provided the landlord with their forwarding address in writing as the tenant's forwarding address and address for service is included in the Application. The parties have not agreed in writing that the landlord can retain the security deposit. The landlord does not have a monetary order against the tenants and the landlord failed to file an Application for Dispute Resolution within the 15 days from the later of the end of tenancy or the date the landlord receives the tenants' forwarding address in writing. The tenant's have not waived their right to the doubling of the security deposit. As a result I determined the tenants have established a claim against the landlord for double the security deposit or the sum of \$800.

Section 72 of the Residential Tenancy provides as follows

**Director's orders: fees and monetary orders**

- 72** (1) The director may order payment or repayment of a fee under section 59 (2) (c) [*starting proceedings*] or 79 (3) (b) [*application for review of director's decision*] by one party to a dispute resolution proceeding to another party or to the director.
- (2) If the director orders a party to a dispute resolution proceeding to pay any amount to the other, including an amount under subsection (1), the amount may be deducted

**(a) in the case of payment from a landlord to a tenant, from any rent due to the landlord, and**

**(b) in the case of payment from a tenant to a landlord, from any security deposit or pet damage deposit due to the tenant.**

I determined the tenants have established a claim against the landlord in the sum of \$800. The tenants owe rent in the sum of \$415. After applying section 72(2)(a) I determined one claim should be set off against the other and I determined the landlord owes the tenants the sum of \$385.

Monetary Order and Cost of Filing fee

**I ordered the landlord(s) to pay to the tenant the sum of \$385.**

It is further Ordered that this sum be paid forthwith. The applicant is given a formal Order in the above terms and the respondent must be served with a copy of this Order as soon as possible.

Should the respondent fail to comply with this Order, the Order may be filed in the Small Claims division of the Provincial 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: May 22, 2015

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Residential Tenancy Branch

