



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### Dispute Codes

Landlords' application: MNR, MNSD, MNDC, FF

Tenant's application: MNDC, MNSD, FF, O

### Introduction

This was a hearing with respect to applications by the tenant and by the landlords. The hearing was conducted by conference call. The tenant and the named landlord called in and participated in the hearing.

### Issue(s) to be Decided

Is the tenant entitled to a monetary award and if so, in what amount?

Is the tenant entitled to the return of all or part of his security deposit?

Is the tenant entitled to any other relief?

Is the landlord entitled to a monetary award and if so, in what amount?

Is the landlord entitled to retain all or part of the deposit?

### Background and Evidence

The rental unit is a cottage on residential property. There is another dwelling on the property. The tenancy began on June 1, 2014 for a one year term, with rent in the amount of \$850.00 payable on the first of each month. The tenant paid a security deposit of \$425.00 at the commencement of the tenancy.

In September, 2014, for reasons that were not fully explained by either party at the hearing, the landlord asked the tenant to move out of the rental unit. The request followed the attendance of a RCMP officer to a house on the rental property that is separate from the rental unit. The attendance was in relation to a complaint by a female occupant alleging an assault or interference by the tenant. I was not provided with evidence that any criminal offence was committed. The landlord did not give the tenant

a Notice to End Tenancy for cause. The tenant said that he told the landlord by text message that he would move out by the end of October and provided a web-link to an online form of mutual agreement to end tenancy. The tenant also sent the landlord a letter dated September 24, 2014. The letter stated as follows:

On September 17<sup>th</sup> 2014, we had a conversation and you requested that I terminate my tenancy with you by the end of October, 2014.

This request was the result of the RCMP attending a call on the property September 16<sup>th</sup> 2014.

That evening, I sent a text message to your cell phone number (number) with a web-link to a "Mutual Agreement to End a Tenancy" document to fill out and return to me for signature.

To date I have not received the document or any communication.

As it appears to me, you want me to move out as quickly as possible, please find attached for signature another copy of the agreement, to have my tenancy end September 30<sup>th</sup> 2014.

Please mail it to me at the rental address, it will automatically be redirected to me elsewhere.

The tenant said that he felt harassed by the landlord and left the rental unit on September 18<sup>th</sup> to stay with a relative. On September 25, 2014 the tenant rented a truck to move his belongings out of the rental unit.

The landlord sent a text message to the tenant dated September 26, 2014. The message said in part that:

As we discussed and you mentioned in your text our mutually agreed upon end tenancy date is Oct 31<sup>st</sup> 2014. We have to give each other minimum of 4 weeks end of tenancy by law; we in fact gave you 6 weeks. We will be presenting your Oct 2014 rental cheque.

The tenant said he removed the last of his belongings from the rental unit on September 29, 2014. The tenant said that when he left the unit he left the porch light on and the following day he left a signed copy of a form of mutual agreement to end tenancy signed by the tenant alone and purporting to end the tenancy on September 30, 2014. He left the document together with the keys to the unit in the mailbox. The tenant said that the porch light was turned off and he said that the landlord had entered the rental unit without his permission.

The tenant's rent for the month of October was paid by way of post-dated cheque.

The tenant sent a letter to the landlord dated March 14<sup>th</sup>, 2015 wherein he provided the landlord with his forwarding address and requested the return of his security deposit.

In his application for dispute resolution the tenant claimed payment of the sum of \$3,751.94. He claimed the equivalent of two months' rent as compensation or damages, moving expenses of \$76.52 for a truck rental, one day's pay in the amount of \$275.42, double the amount of his \$425.00 security deposit and the return of rent paid for October in the amount of \$850.00

In the landlords' application filed on December 31, 2014, they claimed payment of the sum of \$1,275.00. The claim was for a monetary award in the amount of the security deposit and payment of \$850.00 as rent for November. The landlord said that he had been unable to rent the unit for November and claimed that the tenant did not properly clean the rental unit. Although there was a reference in the landlords' monetary order worksheet to photographs of the rental unit and to a move-out inspection report, the landlord failed to provide these documents. The landlord did not submit any invoices or receipts with respect to expenditures for cleaning or repairs.

### Analysis

Dealing first with the landlords' application, there is no dispute that the landlord requested that the tenant move out of the rental unit and that the tenant, rather than insisting upon a formal Notice to End Tenancy, said that he would move out voluntarily pursuant to a mutual agreement to end tenancy. On September 18<sup>th</sup> the tenant first proposed to the landlord that he would move at the end of October and provided him with a link to a form of Mutual Agreement to End Tenancy. The landlord's e-mail dated September 26<sup>th</sup> records the landlord's confirmation that the tenancy would end October 31, 2014. I find that there was an agreement that the tenancy would end October 31<sup>st</sup>. The tenant was fully moved out and the keys returned by September 30<sup>th</sup>. I find that the landlord has failed to establish a valid basis for a claim for payment of November's rent and the claim is dismissed without leave to reapply. The landlord has not provided evidence to establish entitlement to an award in any amount for cleaning and repairs and the landlord's claim to retain the security deposit is also dismissed without leave to reapply.

With respect to the tenant's claim, I do not find that there is evidence to support his assertion that he signed or agreed to a mutual agreement to end tenancy under some form of duress, as he claimed in his application. The evidence presented at the hearing was that the police attended at the rental property after the tenant had an encounter with a visitor to the house on the property. Thereafter the landlord asked the tenant to move and within a day of the request the tenant proposed that he would move out by

October 31<sup>st</sup>. The tenant did not describe any provocative behaviour by the landlord that would constitute harassment or that could be seen as grounds for finding that the tenant agreed to end the tenancy under duress or compulsion. The circumstances described by the tenant at the hearing do not, in my view constitute harassment. The tenant made his own decision to end the tenancy and he proposed that the parties end the tenancy by mutual agreement.

The tenant claimed that the landlord entered the rental unit on or after September 29<sup>th</sup> and this was a violation of the tenant's rights; if this did occur, it apparently did not disturb the tenant's use and occupancy because he had already moved out. I find that the tenant is not entitled to compensation or damages and he is not entitled to be reimbursed for his moving expenses or for income loss; these claims are dismissed without leave to reapply. It was not until March 2015 that the tenant sent a letter to the landlord to request the return of his security deposit along with confirmation of his forwarding address. By then the landlord had already applied to claim the deposit. The landlords' monetary claims have been dismissed without leave to reapply; the tenant is entitled to a monetary award for the return of his security deposit, but not to an award of double the amount of the deposit. The tenant has been largely unsuccessful on his application and I decline to award the filing fee for the tenant's application.

### Conclusion

The landlords' application is dismissed without leave to reapply. I grant the tenant a monetary order under section 67 in the amount of \$425.00. This order may be registered 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: June 1, 2015

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Residential Tenancy Branch

