



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPL, MNSD, FF, O

### Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the Act) for:

- an order of possession for landlord's use pursuant to section 55;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38;
- authorization to recover her filing fee for this application from the tenant pursuant to section 72; and
- an "other" remedy.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. Neither party elected to call witnesses or cross examine.

The tenant acknowledged receipt of the landlord's dispute resolution package. The landlord acknowledged receipt of the tenant's late evidence and consented to my consideration of the two pages notwithstanding their late delivery.

### Issue(s) to be Decided

Is the landlord entitled to an order of possession for landlord's use? Is the landlord entitled to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary award requested? Is the landlord entitled to recover the filing fee for this application from the tenant? Is the landlord entitled to an "other" remedy?

### Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the submissions and / or arguments are reproduced here. The principal aspects of the landlord's claim and my findings around it are set out below.

The tenant began occupation of the rental unit in November 2013 as a roommate of an earlier occupant. The other occupant left the rental unit and the tenant entered into a tenancy in common with a roommate. The tenant and landlord entered into a tenancy agreement and the roommate and landlord entered into a second parallel tenancy agreement. The written tenancy agreements were entered into on 6 June 2014. This tenancy ended 1 April 2015 when the tenant vacated the rental unit.

The tenant and landlord's written tenancy agreement purported to cover a tenancy beginning 1 June 2014. Monthly rent of \$550.00 was due on the fifth. The landlord sought payment of a \$275.00 security deposit. The landlord collected and continues to hold the tenant's remitted security deposit in the amount of \$137.50.

The landlord and tenant agree that a condition move in inspection report was conducted 5 June 2014. The landlord and tenant agree that no condition move out inspection report was completed in respect of this tenancy.

On 1 February 2015 the landlord issued a 2 Month Notice to End Tenancy for Landlord's Use (the 2 Month Notice). The 2 Month Notice was delivered to the roommate on 1 February 2015. The 2 Month Notice set out that the tenant had to vacate the rental unit on or before 1 April 2015.

The landlord testified that the tenant left the rental unit dirty. The tenant testified that he cleaned to the best of his abilities and that any remaining debris or cleaning was the responsibility of the roommate.

At the hearing I asked the tenant if he was waiving doubling of the security deposit in the event I found that the landlord's right to claim against the deposit was extinguished. After careful consideration and a private conversation with his former landlord, he agreed to waive doubling of the deposit.

### Analysis

The landlord has applied for an order of possession. Both parties agree that possession of the rental unit has returned to the landlord. As possession has returned to the landlord, I dismiss the landlord's application for an order of possession on the basis of the 2 Month Notice as the issue is moot.

The landlord has applied to retain the tenant's security deposit.

Section 35 of the Act provides that the landlord and tenant together must inspect the condition of the rental unit. Subsection 35(2) provides that that the landlord must offer the tenant two opportunities for inspection. The landlord did not comply with subsection 35(2) of the Act and no condition move out inspection report was created.

Pursuant to subsection 36(2) of the Act, the landlord's right to claim against a security deposit is extinguished if the landlord does not comply with subsection 35(2) of the Act. As the landlords failed to comply with subsection 35(2) of the Act, the landlord's right to claim against the tenants' security deposit was extinguished. The landlord's application to retain the tenant's security deposit is dismissed without leave to reapply.

Pursuant to paragraph 59(2)(b), an application of dispute resolution must include the full particulars of the dispute that is to be the subject of the dispute resolution proceedings. The purpose of the provision is to provide the responding party with enough information to know the applicant's case so that the respondent might defend him or herself. The landlord in this case did not articulate any "other" remedy in her application or at the hearing. As such, I dismiss the landlord's claim for an "other" remedy as there are insufficient particulars to proceed.

As the landlord has been unsuccessful in her claim she is not entitled to recover her filing fee from the tenant.

*Residential Tenancy Policy Guideline*, "17. Security Deposit and Set off" sets out that:

1. The arbitrator will order the return of a security deposit, or any balance remaining on the deposit, less any deductions permitted under the Act, on:
  - a landlord's application to retain all or part of the security deposit, or
  - a tenant's application for the return of the depositunless the tenant's right to the return of the deposit has been extinguished under the Act. The arbitrator will order the return of the deposit or balance of the deposit, as applicable, whether or not the tenant has applied for arbitration for its return.

3. Unless the tenant has specifically waived the doubling of the deposit, either on an application for the return of the deposit or at the hearing, the arbitrator will order the return of double the deposit:
- If the landlord has not filed a claim against the deposit within 15 days of the later of the end of the tenancy or the date the tenant's forwarding address is received in writing;
  - If the landlord has claimed against the deposit for damage to the rental unit and the landlord's right to make such a claim has been extinguished under the Act;
  - If the landlord has filed a claim against the deposit that is found to be frivolous or an abuse of the arbitration process;
  - If the landlord has obtained the tenant's written agreement to deduct from the security deposit for damage to the rental unit after the landlord's right to obtain such agreement has been extinguished under the Act;
  - whether or not the landlord may have a valid monetary claim.

At the hearing the tenant indicated he was waiving his right to doubling. As such I order return to the tenant of only the original amount of his security deposit, that is, \$137.50. This waiver only applies for the purpose of this hearing.

### Conclusion

I issue a monetary order in the tenant's favour in the amount of \$137.50. The tenant is provided with a monetary order and the landlord(s) must be served with this order as soon as possible. Should the landlord(s) fail to comply with this order, this 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 subsection 9.1(1) of the Act.

Dated: June 30, 2015

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Residential Tenancy Branch

