



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes            FF, MNSD, MNDC

### Introduction

A hearing was conducted by conference call in the presence of the applicant and in the absence of the respondent although duly served. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

I find that the Application for Dispute Resolution/Notice of Hearing was sufficiently served on the landlord by mailing, by registered mail to where the landlord resides on April 17, 2015. A search of the Canada Post tracking service indicates it was successfully delivered on April 23, 2015. With respect to each of the applicant's claims I find as follows:

### Issue(s) to be Decided:

The issues to be decided are as follows:

- a.        Whether the tenant is entitled to a monetary order and if so how much?
- b.        Whether the tenant is entitled to recover the cost of the filing fee?

### Background and Evidence

In January 2015 the tenant agreed to rent the rental unit from the landlord commencing March 1, 2015. The rent was \$800 per month payable in advance on the first day of each month. The tenant paid a security deposit of \$400. He subsequently paid 3 months rent in advance totaling \$2400. The term was month to month.

On January 28, 2015 the tenant advised the landlord by telephone that he was cancelling the tenancy agreement. The tenant demanded the return of monies paid. On February 23, 2015 the landlord returned \$2000 of the monies paid. While it is not clear, I take this to mean that the landlord was returning the security deposit of \$400 and two months of rent. The landlord stated that he takes the position he was entitled to keep one month rent.

Analysis

After carefully considering all of the evidence presented at the hearing I determined the tenant is entitled to the return of the \$800. The tenant cancelled the agreement at the end of January and the landlord knew at that time he was not going to move in.. The tenant should properly have cancelled the agreement in writing. However, the landlord has an obligation to act reasonably to lessen his loss by attempting to re-rent the rental unit. The landlord failed to attend the hearing and failed to present any evidence showing reasonable efforts to attempt to re-rent. As a result I determined the landlord has failed to establish a claim to that money as the landlord breached the obligation to mitigate his loss.

Monetary Order and Cost of Filing fee

**I ordered the landlord(s) to pay to the tenant the sum of \$800 plus the sum of \$50 in respect of the filing fee for a total of \$850.**

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: September 17, 2015

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Residential Tenancy Branch

