



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Sterling Management Services Ltd.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNSD, MNDC, FF

### Introduction

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

### Issue(s) to be Decided

Is the tenant entitled to the refund of a security deposit in the amount of \$497.50  
Is the landlord entitled to a monetary award for loss of rental income and for an order to retain the security deposit?

### Background and Evidence

The rental unit is a two bedroom apartment in Fort St. John. The tenant and her friend, C.H. planned to rent an apartment as co-tenants. On April 9, 2015 they viewed the rental unit and gave the landlord a security deposit of \$497.50. They did not sign a tenancy agreement at the time but did agree to rent the unit commencing May 1<sup>st</sup>. The tenant testified that shortly after agreeing to rent the unit and paying the deposit, the tenant's prospective co-tenant told her that she was pregnant and would not be able to rent the unit with her. The tenant testified that on April 14<sup>th</sup> she told the landlord that she would not be able to rent the unit because of the changed circumstances. She also informed the landlord that the tenant had paid the security deposit and the receipt should be in the tenant's name.

The tenant said that the landlord told her that she would not get her deposit back unless the unit was rented by the end of April, 2015. The tenant said that she telephoned the landlord several days later to ask whether the unit was available for rent. The tenant said she was told that it was occupied and not available for rent. The tenant said that her mother also called the landlord and attended at the landlord's office. According to the written statement provided, she attended at the landlord's office on April 26, 2015. She picked up a copy of the landlord's rentals list and spoke to the landlord's employee. She said in her statement that the landlord's employee told her there were no two bedroom units available for rent at the address of the rental property. The tenant

submitted a copy of the landlord's rental list obtained by her mother. It contained a handwritten annotation, presumably written by the tenant's mother, recording that no 2 bedroom unit was available at the rental property.

The tenant gave the landlord her forwarding address in writing by letter dated April 29, 2015.

The landlord did not submit any documentary evidence in support of its application, apart from proof that the tenant was served with the landlord's application and Notice of Hearing by registered mail sent on May 8, 2015. The landlord claimed in its application that the tenant notified the landlord on April 14<sup>th</sup> that she would not be taking the unit. The landlord requested a monetary order in the amount of May rent, said to be \$995.00 and an order to retain the security deposit. The landlord did not prepare a tenancy agreement when the tenants paid the security deposit. The landlord's representative said that ordinarily a tenancy agreement would be prepared and signed before the tenants were given possession of the rental unit.

The landlord's representative testified at the hearing that the rent unit was not re-rented for May. The landlord's representative said that the landlord maintains a list of available rental properties at its office and provides information about available rentals to prospective tenants. The landlord's representative said that the landlord did not advertise specific units for rent. The landlord's representative disagreed with the tenant's testimony that she and her mother were told that the unit was rented and that no two bedroom units were available.

### Analysis

Section 20 (a) of the *Residential Tenancy Act* provides that a landlord may not require a security deposit at any time other than when the landlord and tenant enter into the tenancy agreement. The landlord did not prepare a written tenancy agreement when the deposit was accepted, but the landlord's position is that the tenancy was created and the agreement would have been signed in the ordinary course had the tenants not repudiated the agreement. The landlord has applied for a monetary award in the amount of one month's rent based on the tenant's failure to honour the tenancy agreement. Section 7 (1) of the *Act* provides that if a landlord or tenant does not comply with the Act or a tenancy agreement the non-complying landlord or tenant must compensate the other for damage or loss that results, but notwithstanding a breach of the tenancy agreement the party claiming compensation must do whatever is reasonable to minimize the damage or loss.

In the case of a tenant who repudiates a tenancy agreement before it is scheduled to commence, the landlord will be expected to make reasonable efforts to mitigate its loss by seeking to re-rent the unit as soon as possible after notice of the breach. The tenant informed the landlord on April 14<sup>th</sup> that she was no longer prepared to rent the unit. The landlord has not provided any documentary evidence to show that the rental unit was

advertised in any form of media after April 14<sup>th</sup>. The landlord's representative said at the hearing that the unit was offered for rent at the landlord's office and that the unit has remained un-rented. The landlord's representative said that the landlord does advertise, but it has not provided any examples and no evidence of specific efforts to market or advertise the rental unit.

The evidence established that the tenant breached the tenancy agreement which was to commence on May 1, 2015. The landlord was notified on April 14<sup>th</sup> that the rental would not proceed. The landlord had three weeks to attempt to secure another tenant. The landlord has not submitted any documentary evidence to show what steps, if any that it took to re-rent the unit. There is no record of any advertisements, nor any records of inquiries, viewings or other marketing efforts.

I find that the landlord has not provided evidence to establish, on a balance of probabilities, that it made reasonable efforts to minimize its damage or loss. I therefore dismiss the landlord's claim for unpaid rent or loss of revenue for May without leave to reapply.

### Conclusion

The landlord's application for a monetary award has been dismissed without leave to reapply. The tenant's application for the return of her security deposit is granted. The tenant is entitled to recover the \$50.00 filing fee for her application, for a total award of \$547.50. I grant the tenant an order under section 67 in the said amount. 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: September 22, 2015

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Residential Tenancy Branch

