



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, MNR, MDSD & 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 10 day Notice to End Tenancy was personally served on the Tenant on July 2, 2015. Further I find that the Application for Dispute Resolution/Notice of Hearing was filed by the landlord was sufficiently served on the tenants by mailing, by registered mail to where the tenants reside on July 8, 2015. 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 landlords reside on August 28, 2015.

### Issue(s) to be Decided

The issues to be decided are as follows:

- a. Whether the tenants are entitled to a monetary order and if so how much?
- b. Whether the tenants are entitled to recover the cost of the filing fee?
- c. Whether the landlords are entitled to an Order for Possession?
- d. Whether the landlords are entitled to A Monetary Order and if so how much?
- e. Whether the landlords are entitled to retain all or a portion of the security deposit/pet deposit?

- f. Whether the landlords are entitled to recover the cost of the filing fee?

### Background and Evidence

The parties entered into a one year fixed term written tenancy agreement that provided that the tenancy would start on August 1, 2014 and end on July 31, 2015. The rent is \$2300 per month payable in advance on the first day of each month. The tenants paid a security deposit of \$1150 at the start of the tenancy.

The tenants advised the landlords they were vacating the rental unit prior to the end of the fixed term. The landlords told the tenants they would return the rent provided they found someone else to rent the rental unit but if they were unable to find someone the tenants would be responsible to pay the rent for July 2015.

The tenants failed to pay the rent for July and vacated on July 6, 2015. The landlords became aware the tenants had vacated on or about July 8, 2015. The landlords found a new tenant but they did not take possession until August 1, 2015.

The parties conducted a Condition Inspection on July 10, 2015. The tenants took a photograph of the Condition Inspection Report on her telephone. The landlords failed to provide the tenant with a copy of the Condition Inspection Report within 15 days of conducting the inspection. Upon request the landlords e-mailed the tenants a copy of the Condition Inspection Report on August 16, 2015.

### Tenant's Application: Analysis

The tenants seek an order for double the security deposit on the basis that the landlord failed to return the security deposit within 15 days of the later of the end of the tenancy or the date the landlord received the tenants' forwarding address in writing. The tenants submit the landlord's right to keep the security deposit was extinguished because of the failure to provide the tenants with a copy of the Condition Inspection Report within 15 days.. The tenants rely on section 36(2) which provides as follows:

## **Condition inspection: end of tenancy**

### **Consequences for tenant and landlord if report requirements not met**

**36** (2) Unless the tenant has abandoned the rental unit, the right of the landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord

(a) does not comply with section 35 (2) [*2 opportunities for inspection*],

(b) having complied with section 35 (2), does not participate on either occasion, or

(c) having made an inspection with the tenant, does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.

Section 18 of the Residential Tenancy Act Regulations provides as follows:

### **Condition inspection report**

**18** (1) The landlord must give the tenant a copy of the signed condition inspection report

...

(b) of an inspection made under section 35 of the Act, promptly and in any event within 15 days after the later of

(i) the date the condition inspection is completed, and

(ii) the date the landlord receives the tenant's forwarding address in writing.

(2) The landlord must use a service method described in section 88 of the Act [*service of documents*].

After carefully considering all of the evidence I determined the tenants failed to establish they are entitled to an order for double the security deposit. I accept the submission that the landlords' right to claim against security deposit for damage to the rental property has been extinguished because of the failure of the landlord to provide the tenant with a copy of the Condition Inspection Report as required by the Act and Regulations. However, the landlords' claim in these proceedings is for non-payment of rent. Policy Guideline #17 includes the following statements:

7. The right of a landlord to obtain the tenant's consent to retain or file a claim against a security deposit for damage to the rental unit is extinguished if:
- the landlord does not offer the tenant at least two opportunities for inspection as required by the Act, and/or
  - having made an inspection does not complete the condition inspection report, in the form required by the Regulation, or provide the tenant with a copy of it.

...

9. A landlord who has lost the right to claim against the security deposit for damage to the rental unit, as set out in paragraph 7, retains the following rights:
- to obtain the tenant's consent to deduct from the deposit any monies owing for other than damage to the rental unit;
  - **to file a claim against the deposit for any monies owing for other than damage to the rental unit; (my emphasis)**
  - to deduct from the deposit an arbitrator's order outstanding at the end of the tenancy
  - to file a monetary claim for damages arising out of the tenancy, including damage to the rental unit.

Section 72(2)(b) of the Residential Tenancy Act provides as follows:

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

**72** (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

...

(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 failed to prove they are entitled to an order for double the security deposit. The landlord is entitled to apply for an order that the security deposit be applied for monies owing other than damage to the rental unit and this includes non-payment of rent. **Accordingly, the tenants' application is dismissed.**

Landlord's Application - Monetary Order and Cost of Filing fee:

I determined the landlord has established a claim against the tenants for non-payment of rent for July 2015. The tenants failed to pay the rent for July. The tenants are

responsible to pay the rent for the complete term of the fixed term tenancy agreement subject to the landlord's obligation to mitigate their loss. I determined the landlord acted reasonably in attempting to find a new renter as soon as the tenants advised they were vacating but they were not able to find a new tenant who was prepared to move into the rental unit in July. The tenants lived in the rental unit until July 6, 2015 and they did not advise the landlord they have left. The landlord only became aware of the departure of the tenants on July 8, 2015. As a result I determined the landlords have established a claim against the tenants in the sum of \$2300 for non-payment of rent for July.

I dismissed the landlord's claim of \$30 for a late fee. Section 7(1)(d) of the Residential Tenancy Act Regulations provide as follows:

**Non-refundable fees charged by landlord**

**7 (1)** A landlord may charge any of the following non-refundable fees:

....

(d) subject to subsection (2), an administration fee of not more than \$25 for the return of a tenant's cheque by a financial institution or for late payment of rent;

(2) A landlord must not charge the fee described in paragraph (1) (d) or (e) unless the tenancy agreement provides for that fee.

The tenancy agreement provided for a late fee of \$30 which is in excess of what is permitted by the Regulations and accordingly this claim must be dismissed.

**I ordered that the tenants pay to the landlord the sum of \$2300 plus the sum of \$50 in respect of the filing fee for a total of \$2350.**

Security Deposit:

**I determined the security deposit plus interest totals the sum of \$1150. I ordered the landlord may retain this sum thus reducing the amount outstanding under this monetary order to the sum of \$1200.**

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 10, 2015

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Residential Tenancy Branch

