



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNSD, FF

### Introduction

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

- 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; and
- authorization to recover her filing fee for this application from the tenant pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, and to call witnesses.

### Preliminary Issue – Service

The landlord testified that she served the tenant with the dispute resolution package on 18 July 2015 by registered mail. The tenant admitted receipt of this package. On the basis of this evidence, I am satisfied that the tenant was served with the dispute resolution package pursuant to section 89 of the Act.

The landlord testified that she served her evidence to the tenant on 23 November 2015 by registered mail. The tenant testified that she did not receive this package. On the basis of paragraph 90(a) of the Act, the tenant was deemed served with the evidence package on 28 November 2015, the fifth day after its mailing.

### Preliminary Issue – Exclusion of Landlord's Late Evidence

The landlord filed her application 23 June 2015. The tenant was deemed served with the landlord's evidence 28 November 2015.

Rule 3.14 of the *Residential Tenancy Branch Rules of Procedure* (the Rules) establishes that evidence from the applicant must be submitted not less than 14 days before the hearing. The definition section of the Rules contains the following definition:

In the calculation of time expressed as clear days, weeks, months or years, or as “at least” or “not less than” a number of days weeks, months or years, the first and last days must be excluded.

In accordance with rule 3.14 and the definition of days, qualified by the words “not less than”, the last day for the landlord to file and serve additional evidence was 26 November 2015.

This evidence was not served within the timelines prescribed by rule 3.14 of the *Residential Tenancy Branch Rules of Procedure* (the Rules). Where late evidence is submitted, I must apply rule 3.17 of the Rules. Rule 3.17 sets out that I may admit late evidence where it does not unreasonably prejudice one party. Further, a party to a dispute resolution hearing is entitled to know the case against him/her and must have a proper opportunity to respond to that case.

The tenant did not consent to the admission of this late evidence. The tenant submitted that she would have liked to examine the photographs for authenticity and to respond. The landlord submitted that the tenant would have had at least a week prior to the hearing and that this was sufficient time to respond. The landlord submitted that there were circumstances that prevented her from providing the evidence earlier, but did not provide any specifics.

In this case, the late evidence includes photographs of the rental unit that the tenant was entitled to examine in order to be able to respond meaningfully to the landlord's application. It is through the landlord's own inaction that this evidence was served late. The landlord had nearly six months to prepare and serve this evidence. The landlord did not provide any reason that would excuse this delay. Accordingly, I excluded the late evidence from consideration in this hearing.

I informed the parties of this decision at the hearing.

### Preliminary Issue – Landlord's Amendment

The package sent to the tenant 23 November 2015 included a proposed amendment for a monetary order in the amount of \$1,903.06. The landlord's original application only seeks to retain the tenant's security deposit in the amount of \$600.00.

I informed the landlord at the hearing that I would have to make a decision as to whether or not to allow the landlord's amendment.

The landlord pointed to her amended application of 16 July 2015 and states that the amendment was delivered at that time. I do not agree with this submission. That amendment only adds details to the dispute setting out that the landlord is seeking compensation for a loss or money owed. The landlord did not alter the amount of the monetary order sought in her amended application dated 16 July 2015.

The landlord asked to withdraw her claim and refile. I informed the landlord that if she selected this course of action, she may be exposing herself to the penalty set out in subsection 38(6) of the Act. I informed the landlord that as long as she understood this risk, I would permit her to withdraw and refile.

The landlord then determined she wished to proceed with the amendment request. The tenant did not consent to the amendment.

Paragraph 64(3)(c) allows me to amend an application for dispute resolution. In determining whether or not to permit the amendment, I must consider the possible prejudice to the responding party. A responding party is entitled to know the case he or she must meet and this requires adequate notice of the applicant's claim.

I find that the tenant did not have sufficient notice of the proposed amendment to the monetary amount of \$1,903.06. On this basis, it would unduly prejudice the tenant to allow the landlord to amend her application. I reject the landlord's application to amend her application.

The parties were informed of this decision at the hearing.

The scope of this application is the landlord's claim for a monetary order in the amount of \$600.00, to retain the tenant's security deposit, and recovery of the filing fee.

Issue(s) to be Decided

Is the landlord entitled to a monetary award for loss arising out of this tenancy? 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?

### 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.

This tenancy began 15 June 2012. The parties entered into a written tenancy agreement on that day. The landlord did not provide me with a copy of this agreement. Monthly rent in the amount of \$1,200.00 was due on the first. The landlord collected a security deposit in the amount of \$600.00, which she continues to hold.

The tenancy ended pursuant to notice from the tenant. The tenant testified that she called the landlord at the end of April 2015 to tell the landlord that the tenant wished to end the tenancy. The landlord testified that the tenant called in mid to late May indicating that she wished to end the tenancy 1 June 2015. The landlord testified that she asked the tenant to provide written notice.

I was provided with a copy of the written notice dated 30 May 2015. The tenant testified that this date was actually her proposed end to tenancy and not the date the notice was provided. The tenant testified that she sent this notice in April 2015. The landlord testified that she received the tenant's notice on 5 June 2015. The tenant's notice informed the landlord that she would be vacating the rental unit on 1 June 2015, but perhaps as late as 15 June 2015 depending on the tenant's circumstances.

There is disagreement as to the date possession of the rental unit transferred back to the landlord; however, possession transferred no later than 14 June 2015.

The landlord testified that entered into the next tenancy commencing 1 July 2015.

### Analysis

Subsection 45(1) of the Act sets out that:

A tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that

- (a) is not earlier than one month after the date after the landlord receives the notice, and
- (b) is before the day in the month...that rent is payable under the tenancy agreement.

On the basis of the evidence before me, I find that the tenant provided her written notice on or about 30 May 2015. I reject the tenant's submission that the date on the notice is the date which she intended to her notice to be effective. It is much more plausible that the date 30 May 2015 was the date the notice was provided. Further, the tenant's notice is very vague and does not provide a specific date before which the tenant will provide the landlord with possession. Pursuant to subsection 45(1) of the Act, the earliest effective date for the tenant's notice given 30 May 2015 was 30 June 2015. On this basis, the tenant was liable for rent for June 2015.

The landlord has proven her entitlement to rent for June 2015 in the amount of \$1,200.00; however, as set out above, the landlord's application limits her compensation to \$600.00. On this basis, I find that the landlord is entitled to a monetary award for this amount. The amount of her monetary award will be offset against the amount of the tenant's security deposit.

As the landlord has shown her entitlement to the maximum compensation allowable under the landlord's application, I do not need to consider the remainder of the landlord's claim.

As the landlord was successful in this application, I find that the landlord is entitled to recover the \$50.00 filing fee paid for this application.

Conclusion

I issue a monetary order in the landlord's favour in the amount of \$50.00 under the following terms:

<b>Item</b>	<b>Amount</b>
Claim Allowed	\$600.00
Offset Security Deposit Amount	-600.00
Recovery of Filing Fee for this Application	50.00
<b>Total Monetary Order</b>	<b>\$50.00</b>

The landlord is provided with this order in the above terms and the tenant(s) must be served with this order as soon as possible. Should the tenant(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: December 14, 2015

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Residential Tenancy Branch

