



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      FF, MNR, MND, MNSD & MNDC

### Introduction

The Application for Dispute Resolution filed by the landlord makes the following claims:

- a. A monetary order in the sum of \$500 for unpaid rent and damages
- b. An order to keep the security deposit.
- c. An order to recover the cost of the filing fee

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 Application for Dispute Resolution/Notice of Hearing was served by mailing, by registered mail to where the respondent resides.

### Issue(s) to be Decided

The issues to be decided are as follows:

- a. Whether the landlord is entitled to a monetary order and if so how much?
- b. Whether the landlord is entitled to retain all or a portion of the security deposit/pet deposit?
- c. Whether the landlord is entitled to recover the cost of the filing fee?

### Background and Evidence

The landlord and SH entered into a tenancy agreement that provided that the tenancy would start on February 15, 2014. The tenancy agreement provided that the tenant(s) would pay rent of \$1000 per month payable in advance on the first day of each month. The tenant(s) paid a security deposit of \$500 at the start of the tenancy.

Unfortunately, the tenant passed away in late July 2015. The landlord was orally advised of the tenant's passing on July 29, 2015. His belongings were removed by his father and the landlord regained possession of the rental unit on August 11, 2015.

The landlord seeks compensation for loss of rent for a portion of August and damage to the rental unit.

However, AH testified that he is not the Executor, Administrator or personal representative of his son's estate. He further testified his son's bank account has been frozen and there is very little money in it.

### Analysis

Policy Guideline #43 includes the following:

#### **“D. NAMING AN ESTATE OF A PERSON WHO HAS DIED**

Where a party to an Application for Dispute Resolution is deceased, the personal representative of the deceased's estate must be named. If the deceased is a respondent to an application, the personal representative must be named and served. If the applicant does not know the name of the deceased's personal representative at the time of filing an Application for Dispute Resolution, the deceased's name can be filled in on the application (e.g. John Doe, deceased). At the hearing, the arbitrator may amend the application to reflect the proper name of the estate.

The personal representative may be the person named as executor in the deceased's will, or the person who has been approved by the court to administer the estate by way of an estate grant.

The proper manner of naming the estate is as follows: John Smith, Personal Representative of the Estate of Mary Jones, Deceased.”

**I ordered that the claim against AH as administrator of the Estate of SH, deceased be dismissed with liberty to re-apply as there is no evidence that AH is not the administrator of the Estate of SH.**

If at some time in the future someone becomes appointed as the Administrator he/she can provide the landlord with their forwarding address in writing. Section 38 and 39 of the Act sets out the rights and obligations of the parties if that occurs and provides as follows:

#### **“Return of security deposit and pet damage deposit**

**38** (1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of

- (a) the date the tenancy ends, and
- (b) the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one of the following:

- (c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;
- (d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

(2) Subsection (1) does not apply if the tenant's right to the return of a security deposit or a pet damage deposit has been extinguished under section 24 (1) *[tenant fails to participate in start of tenancy inspection]* or 36 (1) *[tenant fails to participate in end of tenancy inspection]*.

(3) A landlord may retain from a security deposit or a pet damage deposit an amount that

- (a) the director has previously ordered the tenant to pay to the landlord, and
- (b) at the end of the tenancy remains unpaid.

(4) A landlord may retain an amount from a security deposit or a pet damage deposit if,

- (a) at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant, or
- (b) after the end of the tenancy, the director orders that the landlord may retain the amount.

(5) The right of a landlord to retain all or part of a security deposit or pet damage deposit under subsection (4) (a) does not apply if the liability of the tenant is in relation to damage and the landlord's right to claim for damage against a security deposit or a pet damage deposit has been extinguished under section 24 (2) *[landlord failure to meet start of tenancy condition report requirements]* or 36 (2) *[landlord failure to meet end of tenancy condition report requirements]*.

(6) If a landlord does not comply with subsection (1), the landlord

- (a) may not make a claim against the security deposit or any pet damage deposit, and
- (b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

(7) If a landlord is entitled to retain an amount under subsection (3) or (4), a pet damage deposit may be used only for damage caused by a pet to the residential property, unless the tenant agrees otherwise.

(8) For the purposes of subsection (1) (c), the landlord must use a service method described in section 88 (c), (d) or (f) [*service of documents*] or give the deposit personally to the tenant.

**Landlord may retain deposits if forwarding address not provided**

**39** Despite any other provision of this Act, if a tenant does not give a landlord a forwarding address in writing within one year after the end of the tenancy,

(a) the landlord may keep the security deposit or the pet damage deposit, or both, and

(b) the right of the tenant to the return of the security deposit or pet damage deposit is extinguished.”

The parties are encouraged to see whether they can reach a settlement on their own.

Conclusion:

In conclusion I ordered the application against the respondent be dismissed as there is no evidence that AH is the Executor, Administrator or personal representative of SH, deceased. The landlord has liberty to re-apply if an Executor, Administrator or personal representative comes forward.

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: January 07, 2016

---

Residential Tenancy Branch

