



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, OPN, MNSD, MNR, MNDC, FF

### Introduction

This hearing was convened in response to an application by the Tenant and an application by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”).

The Landlord applied on January 22, 2016 for:

1. An Order of Possession - Section 55;
2. A Monetary Order for unpaid rent or utilities - Section 67;
3. A Monetary Order for compensation - Section 67;
4. An Order to retain the security deposit - Section 38; and
5. An Order to recover the filing fee for this application - Section 72.

The Tenant applied on July 11, 2016 for:

1. An Order for the return of double the security deposit - Section 38; and
2. An Order to recover the filing fee for this application - Section 72.

The Tenant and Landlord were each given full opportunity under oath to be heard, to present evidence and to make submissions. The Witness provided evidence under oath.

### Issue(s) to be Decided

Is the Landlord entitled to unpaid rent or lost rental income?

Is the Landlord entitled to other compensation?

Is the Landlord entitled to retain the security deposit?

Is the Tenant entitled to return of double the security deposit?

Are the Parties entitled to recovery of their respective filing fees?

### Background and Evidence

The following are undisputed facts: The rental unit was advertised as being 900 square feet for a rental amount of \$900.00 per month. In December 2015 the Tenant viewed the unit while other tenants were still in the unit and on December 3, 2015 gave the Landlord a security deposit of \$450.00 for a tenancy start date of January 1, 2016. On January 1, 2016 the Tenant attended the unit, made measurements of the unit and informed the Landlord that she would not move into the unit as it was only 750 square feet and too small for her furniture. On January 9, 2016 the Landlord received the Tenant's forwarding address in a letter requesting return of the security deposit.

The Landlord states that there is no written tenancy agreement. The Landlord states that when the security deposit was collected the Landlord had the printed tenancy agreement ready for signing however the Tenant wanted to sign everything on January 1, 2016. The Landlord states that the move-in inspection was arranged for some time January 1, 2015 and that the Landlord expected to be present at the unit that afternoon with the move-in sheet and tenancy agreement. The Landlord states that the key to the unit was left under the mat outside the unit. The Landlord states that after several calls from the Tenant on January 1, 2016 the Landlord connected with the Tenant and was informed that the Tenant would not move into the unit. The Landlord states that the unit was subsequently advertised for rent online at the same rental amount and that a new tenant was obtained for February 1, 2015. The Landlord refers to documents that she has in front of her including the craigslist advertisement and the next tenancy agreement. These documents were not provided as documentary evidence to support the Landlord's claim. The Landlord claims unpaid rent of \$900.00.

The Tenant states that the Landlord did not have any tenancy agreement for signing when the Tenant paid the security deposit. The Tenant and Witness each separately

state that when they arrived at the unit early January 1, 2016 the unit was unclean and the keys were left inside the unsecured unit. The Tenant and Witness each separately state that the unit appeared much smaller than its advertised size so they measured it at 750 square feet. The Tenant states that she purposely was looking for a unit larger than 900 square feet as she had been in an 850 square foot unit and her furniture just fit. The Tenant states that when she informed the Landlord of the reduced size the Landlord was not surprised. The Tenant states that the Landlord told the Tenant that the unit size was not measured by the Landlord and was advertised based on what she had been told. The Tenant argues that the Landlord misrepresented the size of the unit and continues to do so with other advertisements made by the Landlord. The Tenant states that the advertisement made by the Landlord in January 2016, after the Tenant refused to take the unit, did not contain the square footage and that the Landlord was seeking \$950.00 per month. The Tenant states that the unit was also advertised on June 1, 2016 for 1,150 square feet at a rental rate of \$950.00.

The Tenant states that on January 1, 2016 the Landlord told the Tenant that the Landlord did not "do cheques" and would return the security deposit by email transfer. The Tenant states that the Landlord explained how an email transfer was done so the Tenant provided her email address to the Landlord and saw the Landlord enter the information on her phone.

The Landlord states that she did not explain an email transfer. The Landlord states that the unit is around 920 square feet as confirmed by the Landlord's realtor. The Landlord states that she obtained this confirmation after the Tenant refused to move into the unit. The Landlord also states that the unit is way above 900 square feet which is why the unit was advertised later as being 1,150 square feet. The Landlord states that she just "guestimated" this size. The Landlord argues that the Tenant was required to provide a month's notice to end the tenancy.

The Landlord states that the Tenant asked the Landlord to have the locks to the unit changed and that this cost the Landlord around \$110.00. The Landlord states that she

paid cash for the work and no receipt was provided. The Tenant disputes that the Landlord had the locks changed since the locks were not been changed on of January 1, 2016.

### Analysis

Section 7 of the Act provides that where a tenant does not comply with the Act, regulation or tenancy agreement, the tenant must compensate the landlord for damage or loss that results. This section further provides that a claiming party must do whatever is reasonable to minimize the damage or loss being claimed.

The Landlord's evidence in many instances did not hold a ring of truth, was contradictory, seemed somewhat cavalier and was completely unsupported. The Tenant's evidence on the other hand was detailed, persuasive and primarily supported. As a result I overall tend to prefer the Tenant's evidence and find that the unit was advertised at much greater size than it was. I also accept the Tenant's preferred evidence that the unit was advertised in January 2016 for a greater amount than what was being sought from the Tenant. As a result I find that the Landlord failed to take reasonable steps to mitigate the lost rental income claimed and I dismiss the claim. As the Landlord provided no supporting evidence for the cost of the lock change and considering the vague evidence of the amount paid, I find that the Landlord has not substantiated its claim for the locks and I dismiss this claim. In effect the Landlord's application is dismissed in its entirety.

Section 38 of the Act provides that within 15 days after the later of the date the tenancy ends, and the date the landlord receives the tenant's forwarding address in writing, the landlord must repay the security deposit or make an application for dispute resolution claiming against the security deposit. Where a Landlord fails to comply with this section, the landlord must pay the tenant double the amount of the security deposit.

I accept the Tenant's persuasive evidence that the Landlord told the Tenant that the Landlord did not "do cheques". From this I accept that the Landlord only did business

by email transfer and that the security deposit would be returned by email transfer. I also accept that the Landlord took the Tenant's information for an email transfer of the funds on January 1, 2016. As a result I find that the Landlord by implication waived its right to receipt of a written forwarding address. Even if the Landlord did not waive its right to a written forwarding address the Landlord's application made on January 22, 2016 had no merit. As the Landlord did not return the security deposit and did not make a bona fide application to claim against the security deposit I find that the Tenant is entitled to return of double the security deposit in the amount of **\$900.00**. As the Tenant's application has been successful I find that the Tenant is also entitled to recovery of the **\$100.00** filing fee for a total entitlement of **\$1,000.00**.

#### Conclusion

I grant the Tenant an order under Section 67 of the Act for **\$1,000.00**. If necessary, this order may be filed 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 16, 2016

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Residential Tenancy Branch