



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNSD, FF

### Introduction

The Application for Dispute Resolution filed by the Tenant seeks the following:

- a. A monetary order in the sum of \$425 .
- b. 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 on the landlords by mailing, by registered mail to where the landlord resides on April 7, 2016. With respect to each of the applicant's claims I find as follows:

### Issue(s) to be Decided

The issues to be decided are as follows:

- a. Whether the tenant is entitled to a monetary order and if so how much?
- b. Whether the tenant is entitled to recover the cost of the filing fee?

### Background and Evidence

The parties entered into a 6 month written tenancy agreement that provided that the tenancy would start on November 1, 2015 and end on April 30, 2016. The rent was \$850 per month payable in advance on first day of each month. The tenant(s) paid a security deposit of \$425 prior to the start of the tenancy. .

On March 1, 2016 the landlord e-mailed the tenant advising him that they had decided not to renew the fixed term tenancy agreement and stating that it was preferable if he moved out on March 31, 2016.

On March 10, 2016 the tenant e-mailed the landlord advising that he had moved all of his belongings out of the house and requesting that the landlord return the proportionate portion of the rent for the balance of March. The e-mail also contains the tenant's forwarding address.

On March 11, 2016 the landlord e-mailed the tenant thanking him for moving his belongings out so quickly and confirming they would be transferring the reimbursement of the proportionate portion of the rent for March. The e-mail also states they would address the return of the security deposit once they had return and taken into account the tenant's utility usage.

The landlord reimbursed the rent on March 11, 2016.

The tenant e-mailed the landlord requesting the deposit on April 4, 2016. The landlord responded stating they would not be able to determine the amount of the reimbursement until the weekend.

On April 10, 2016 the deposit was returned plus the utility deposit (which was double the amount the Tenant was asking).

### Law

The Residential Tenancy Act provides that a landlord must return the security deposit plus interest to the tenants within 15 days of the later of the date the tenancy ends or the date the landlord receives the tenants forwarding address in writing unless the parties have agreed in writing that the landlord can retain the security deposit, the landlord already has a monetary order against the tenants or the landlord files an Application for Dispute Resolution within that 15 day period. It further provides that if the landlord fails to do this the tenant is entitled to an order for double the security deposit.

Section 44 of the Residential Tenancy Act provides as follows:

**44 (1)** A tenancy ends only if one or more of the following applies:

(a) the tenant or landlord gives notice to end the tenancy in accordance with one of the following:

(i) section 45 *[tenant's notice]*;

- (ii) section 46 *[landlord's notice: non-payment of rent]*;
  - (iii) section 47 *[landlord's notice: cause]*;
  - (iv) section 48 *[landlord's notice: end of employment]*;
  - (v) section 49 *[landlord's notice: landlord's use of property]*;
  - (vi) section 49.1 *[landlord's notice: tenant ceases to qualify]*;
  - (vii) section 50 *[tenant may end tenancy early]*;
- (b) the tenancy agreement is a fixed term tenancy agreement that provides that the tenant will vacate the rental unit on the date specified as the end of the tenancy;
- (c) the landlord and tenant agree in writing to end the tenancy;
  - (d) the tenant vacates or abandons the rental unit;
  - (e) the tenancy agreement is frustrated;
  - (f) the director orders that the tenancy is ended.

### Analysis

The tenant paid a security deposit of \$425 prior to the start of the tenancy. The landlord submits that the end of tenancy date should be March 31, 2016 and that they returned the security deposit within the required period. I determined the tenancy ended on March 10, 2016 for the following reasons:

- Section 44 sets out how a tenancy ends. I determined the tenant vacated the rental unit on that date and this occurred prior to any agreement for the end of March.
- The landlord was aware the tenant had vacated. The landlord accepted the tenant had left when the landlord regained possession and reimbursed the Tenant for the balance of the rent for March.
- The e-mails indicate the landlord proposed ending the tenancy early on March 31, 2016. The landlord failed to prove the tenants agreed to that date in writing. Rather, the next e-mail is an e-mail from the Tenant stating he had vacated the rental unit on March 10, 2016. The landlord failed to prove there was a mutual agreement in writing that the tenancy would end on March 31, 2016.

I further determined the tenants provided the landlord with their forwarding address in writing on March 10, 2016. The parties have not agreed in writing that the landlord can retain the security deposit. The landlord does not have a monetary order against the tenants and the landlord failed to file an Application for Dispute Resolution within the 15 days from the later of the end of tenancy or the date the landlord receives the tenants'

forwarding address in writing. As a result I determined the tenants have established a claim against the landlord for double the security deposit minus the amount returned after the 15 day period ( $\$425 \times 2 = \$850 - \$425 = \$425$ ). I dismissed the claim for interest as the Regulations provide that interest is not payable on a security deposit in 2016.

Monetary Order and Cost of Filing fee

I ordered the landlord(s) to pay to the tenant the sum of \$425 plus the sum of \$100 in respect of the filing fee for a total of \$525.

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 16, 2016

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Residential Tenancy Branch