



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDC, MNSD

### Introduction

The tenant applies to recover rent money and deposit money paid for a rental unit that he says was not available to him on the first day of the tenancy.

Both parties attended the hearing and were given the opportunity to be heard, to present sworn testimony and other evidence, to make submissions, to call witnesses and to question the other. Only documentary evidence that had been traded between the parties was admitted as evidence during the hearing.

### Issue(s) to be Decided

Has the landlord breached the terms of the tenancy? If so, what damages has the tenant suffered as a result? Is the tenant entitled to return of his deposit money?

### Background and Evidence

The rental unit is a one bedroom apartment.

There is no tenancy agreement. The parties agree that the rent was \$400.00 per month due on the first of each month. They agree that prior to December 15, 2016 the landlord had received from the welfare office on the tenant's behalf the sum of \$375.00 towards rent and \$200.00 for a security deposit.

The tenant says the tenancy started on December 15. He says he contacted the landlord for the key on December 15 but the landlord stated that he wanted to paint the premises first. The tenant said he would paint it himself. The landlord said the old tenant had not moved out yet.

The tenant went to the police but they could not help. The tenant expressed a concern about a postal worker reading the mail he wished to send. Neither of those aspects are, in my view, particularly relevant to the central issues here.

The tenant never did move in. By December 23 he gave the landlord written notice that he would not move in and on December 28, made this application.

The landlord testifies that he hadn't promised the place to the tenant for December 15 but told him that if the tenant could get the money and if the landlord could get the current tenant out then the tenant could have the place for then.

He says the tenant contacted him for the keys on December 16 because the tenant's father wanted him to move out, but he wanted to paint the place and suggested the tenant move in "early next week." He says he offered the tenant a room in the meantime.

The tenant mentioned moving to another town but the landlord insisted they had an agreement to rent this place. He says he told the tenant that he would look for replacement tenants.

The landlord says that later on December 16 he offered the rental unit to the tenant to move into but the tenant declined.

He showed the rental unit to another prospective tenant on December 18 but without success. On December 19 the tenant asked for his money back.

The landlord signed an "Intent to Rent" form for the welfare office, in order to facilitate payment of funds on the tenant's behalf. The form indicates that the tenancy is to start on December 15, 2016

### Analysis

The landlord has put himself in a very difficult position by not preparing the written tenancy agreement that the *Residential Tenancy Act* requires him to prepare. It would have stated definitively when this tenancy was to start.

While there is some convincing evidence that the tenancy was to start January 1 and the tenant was to move in earlier if feasible, I find that the welfare office Intent to Rent

form is an unequivocal statement by the landlord that the tenancy was to start December 15.

I find that the premises were not available to the tenant on December 15 and that the landlord thereby breached the verbal tenancy agreement he had struck with the tenant.

That breach was in the nature of a fundamental breach, going to the very root of the contract and as a result the tenant was entitled to repudiate the contract.

On December 16 the landlord offered the keys to the rental unit to the tenant. The tenant had not by that time conveyed to the landlord his election to repudiate the tenancy. I find that by offering the rental unit to the tenant the landlord had remedied his breach of the tenancy agreement. The tenant no longer had the option of electing to repudiate the tenancy.

As a result, the tenant is not entitled to recover the \$375.00 he paid for his first month's rent.

The landlord would be responsible for damages suffered by the tenant in having to move in a day late, but I am satisfied that the tenant was living with his father at the time and suffered no loss.

The \$200.00 security deposit is a different matter. The landlord does not have the tenant's written authority to keep it nor does he have an arbitrator's order permitting him to keep it.

Section 38 of the *Residential Tenancy Act* (the "Act") provides that once a tenancy has ended and once a landlord has received his tenant's forwarding address in writing, the landlord must either repay the deposit money or make an application to keep it within fifteen days. If a landlord fails to do so, he must account to his tenant for double the deposit money.

In this case I find that the tenancy ended, at the latest, January 31, 2017. On January 5, 2017 the landlord received the tenant's application for dispute resolution. In it the tenant gives his address for "service of documents or notices – where material will be given personally, left faxed or mailed." I find that to be a forwarding address in writing.

The landlord has failed to comply with s. 38 of the *Act* by either repaying the tenant's deposit money or making an application to keep all or a portion of it within the fifteen

day period. The landlord is therefore subject to the doubling penalty imposed by that section.

The tenant has not requested the doubling penalty in his application. Residential Tenancy Policy Guideline 17, "Security Deposit and Set off [*sic*]" states that an arbitrator is to award the doubling penalty even when not requested in a tenant's application, unless the tenant specifically declines it. The tenant has not declined it in this case and so I find that the landlord is obliged to return the tenant's \$200.00 security deposit, doubled to the amount of \$400.00.

### Conclusion

The tenant's claim for recovery of \$375.00 rent is dismissed.

The tenant's claim for recovery of his security deposit is allowed. There is no claim for recovery of any filing fee. The tenant will have a monetary order against the landlord in the amount of \$400.00.

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: February 21, 2017

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Residential Tenancy Branch