



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Dispute Codes:**

MNSD, MND, MNDC, FF

### **Introduction**

This hearing was convened in response to an application by the landlord filed September 19, 2016 for a Monetary Order under the Residential Tenancy Act (the Act) to recover a loss of revenue and for damage and loss and inclusive of recovery of the filing fee associated with this application, and an order to retain the security deposit in partial satisfaction of the monetary claim.

Both parties participated in the hearing with their submissions, document evidence and testimony during the hearing. Prior to concluding the hearing both parties in attendance acknowledged they had presented all of the relevant evidence that they wished to present. Both parties acknowledged receiving the evidence of the other and were prepared to respond to it. Only evidence relevant to the issues of this proceeding are described in this Decision.

### **Issue(s) to be Decided**

Is the landlord entitled to the monetary amount claimed for loss of revenue due to the tenant's non-compliance with the Act, regulations or tenancy agreement?

Is the landlord entitled to the monetary amounts claimed?

### **Background and Evidence**

The following is undisputed by the parties. The tenancy began March 05, 2016 and the tenant vacated September 01, 2016. During the tenancy rent in the amount of \$1300.00 was payable in advance on the first day of each month. At the outset of the tenancy, the landlord collected a security deposit from the tenant in the amount of \$700.00 which they retain in trust.

The landlord seeks compensation for their claim the tenant damaged the unit and did not return the access devices to the rental unit. The landlord also seeks unpaid rent for the month of September 2016 in the amount of \$1300.00 for the reason the tenant did not provide the landlord with notice to end the tenancy as prescribed by the Act.

The tenancy agreement was provided into evidence and states it is for a fixed length of time ending on September 01, 2016. The agreement document indicates the landlord checked the statement that *at the end of the fixed length of time the tenancy may continue on a month to month basis or another fixed term thereafter*. The agreement document also indicates the two landlords and the tenant then each initialled the respective boxes indicating that *the tenancy ends and the tenant must move out at the end of the fixed length of time*. The parties disagreed as to their intentions and the terms entered into the tenancy agreement. The landlord's understanding is that they crafted the agreement to reflect the tenancy could continue after September 01, 2016. The tenant claims they understood the tenancy must end September 01, 2016 and worked diligently to find a new home for September 01, 2016 and were able to do so days from the end of tenancy date they understood to be September 01, 2016. The parties disagreed that they had verbal agreement the tenancy would continue as claimed by the landlord. The landlord provided into evidence copy of an e-mail they claim to have sent the tenant in mid -August 2016 purportedly confirming the tenant's agreement the tenancy would continue into September 2016. The tenant testified they never received the claimed e-mail and the landlord testified the tenant never responded to it. The landlord did not testify to providing the contents of the e-mail by additional method other than by e-mail. In addition the landlord provided into evidence a copy of a

previous Arbitration Decision of the parties in which they claim the Arbitrator determined the tenancy would become a month to month tenancy after September 01, 2016.

The parties agree they did not conduct a *mutual inspection* of the unit at the start of the tenancy nor at the end of the tenancy. The landlord provided a copy of the condition inspection report (CIR) completed solely by them. The parties agree that at the end of the tenancy, disagreement between them resulted in the tenant not returning to the landlord the, *building access fob, parking pass, postal box key, and the rental unit entrance key* – all of which the tenant acknowledged they retain to this day. The tenant testified they attempted through e-mail to arrange for return of the access devices to the landlord but the landlords would not return communication in agreement. The landlord testified acknowledging that emotions were high at the end of the tenancy and disagreement advanced to uncooperative conduct on both their parts. The tenant refused to simply leave the devices in the unit unless the landlord immediately returned the security deposit. And the parties' best intentions to complete an inspection dissolved. The parties provided copies of e-mail communication between them respecting their conduct and their versions of events which clearly contrasted. The e-mails also portray what the parties testified was a disagreement respecting the tenancy's end and the terms of their tenancy agreement.

The landlord also seeks the tenant compensate them for their costs to replace the access devices kept by the tenant for which they provided receipts in support in respective amount of \$135.00, \$7.82, and 23.40 for a new lockset. In addition, the landlord seeks recovery of a cleaning cost of \$100.00 to clean the rental unit balcony at the end of the tenancy for which they provided a receipt in support. The landlord provided a photo image of the claimed "dirty balcony". The tenant provided a photo image as well which I stated during the hearing effectively complements the photo image of the landlord that the balcony surface was unclean. The landlord also seeks compensation for a compromised 'sink stopper' in the amount of \$11.52 which I stated in the hearing appeared clearly to have eroded over time and clearly not due to

anyone's conduct and therefore not 'damage'. I found the condition of the sink stopper to be normal wear and tear, for which the tenant is not responsible.

### **Analysis**

It must be known that the landlord, as applicant, bears the burden of proving their monetary claims on balance of probabilities.

I find it was available to the tenant, despite their disagreements with the landlord over other matters, to return to the landlord their access devices for the rental unit by various other methods than personally handing them back to the landlord. Their retention of these devices appears to clearly have been a ploy to force a return of the security deposit, however impacting the landlord's ability to re-rent the unit. In addition, the tenant was clearly cognoscente through a previous dispute resolution application that if there was disagreement with the landlords they could file for dispute resolution, especially over such matters as the security deposit. I find the landlord was compelled to obtain new access devices in the sum amount of **\$166.22** and I grant the landlord this amount.

I find the landlord and tenant each provided evidence to support that the rental unit balcony was left unclean and I grant the landlord compensation for their cost of **\$100.00** to clean it.

I am dismissing the landlord's claim for a sink stopper.

I find that a tenancy agreement, while an agreement of the tenant as well as the landlord, is an instrument of the landlord and a landlord must be mindful they indicate clearly the parameters and terms under which they are offering their rental unit in exchange for the payable rent. I find that the contrasting testimony clearly indicates the level of ambiguity surrounding the term of the agreement which clearly is not aided by the fact that the landlord did not clearly choose one box over the other in the tenancy agreement: b)(i) or b)(ii), as they are mutually exclusive. I find that the landlord's evidence does not support that a previous Arbitrator *made a finding* the tenancy

agreement could continue on a month to month basis. I find the Arbitrator was solely describing the tenancy agreement in the background portion of the Decision as presented to them. I find I am not bound by their description, and I make the following **findings**.

In this matter, I **find** that the legal doctrine of *Contra Proferentem* applies. *Contra Proferentem* is a Latin term which means “against the offeror.” It refers to a standard in contract law which states that if a clause in a contract, such as a tenancy agreement, appears to be ambiguous it should be interpreted against the interests of the person who insisted that the clause be included or authored it. I find that the tenancy agreement in this matter is clearly an instrument of the landlord who set the parameters of the agreement terms. I find the terms are sufficiently ambiguous that I must interpret the terms in favor of the tenant’s understanding that, *the tenancy ends and the tenant must move out at the end of the fixed term*. In this case, I find the tenant was not required to provide notice they were vacating. **Section 44(b)** of the Act, in relevant part states,

#### **How a tenancy ends**

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

(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;

As a result of all the above I must dismiss the landlord's claim for loss of revenue.

As the landlord was fractionally successful in their claim they are entitled to recover their filing fee. The tenant’s security deposit will be offset from the award made herein.

*Calculation for Monetary Order is as follows:*

landlord’s award for access devices	\$166.22
landlord’s award for cleaning	\$100.00
landlord’s filing fee	\$100.00
<i>less Tenant’s security deposit: in trust</i>	<i>- \$700.00</i>
<b>Monetary Order for tenant</b>	<b>(\$333.78)</b>

**I Order** that the landlord may retain \$366.22 of the tenant's security deposit of \$700.00 in full satisfaction of their award, and **I grant** the tenant a Monetary Order under Section 67 of the Act for the remaining balance of **\$333.78**. If necessary, this Order may be filed in the Small Claims Court and enforced as an Order of that Court.

**Conclusion**

The landlord's application, in part, has been granted and the balance dismissed.

**This Decision is final and binding on both parties.**

*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: March 15, 2017

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Residential Tenancy Branch