



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDC MNSD

### Introduction

This hearing was convened to hear matters pertaining to an Application for Dispute Resolution filed by the Tenant on September 12, 2016. The Tenant filed seeking a Monetary Order for the return of his security deposit and the return of rent paid for September 2016.

The hearing was conducted via teleconference and was attended by the Tenant. No one was in attendance on behalf of the Landlord. The Tenant provided affirmed testimony that on approximately September 5, 2016, he attended the Landlord's property to personally serve her with copies of his application for Dispute Resolution and Notice of hearing documents. He stated the Landlord refused to open her door and spoke to him through a window. The Tenant submitted the Landlord told him to leave the property and he responded that he had papers to serve her. He stated the Landlord instructed him to leave the papers in her mailbox and to leave the property; which he said he did.

A party cannot avoid service by refusing to accept personal delivery. Therefore, based on the undisputed evidence of the Tenant, I find that the Landlord was sufficient served notice of this hearing in accordance with Section 89(1) of the Act. The hearing continued in absence of the Landlord.

### Issue(s) to be Decided

- 1) Has the Tenant proven entitlement to the return of the payment made for his September 2016 rent?
- 2) Has the Tenant proven entitlement to the return of his security deposit?

### Background and Evidence

I heard the Tenant state he entered into a written tenancy agreement which commenced on June 15, 2016. Rent of \$650.00 was payable on or before the first of each month. Prior to occupying the unit the Tenant paid \$325.00 as the security deposit.

The rental unit was described as being a single room occupancy unit will access to common areas which were shared amongst 4 other occupants. One of those occupants was the manager.

The Tenant submitted the manager had problems with alcohol and was intolerable to reside with. He stated he spoke with the Landlord regarding the issues with the manager; after which she convinced him to try to work through things with the manager. Then the next time the manager was drunk he served the Landlord with one month's notice and vacated the property by September 1, 2016.

The Tenant stated his rent was paid directly to the Landlord from Income Assistance in advance of the first of each month. He asserted the Landlord refused to return his security deposit and his rent that had been prepaid for September 2016. The Tenant stated that he had not served the Landlord with his forwarding address.

### Analysis

Section 62 (2) of the *Act* stipulates that the director may make any finding of fact or law that is necessary or incidental to making a decision or an order under this *Act*. After careful consideration of the foregoing; documentary evidence; and on a balance of probabilities I find pursuant to section 62(2) of the *Act* as follows:

**Section 7** of the *Act* provides as follows in respect to claims for monetary losses and for damages made herein:

- 7(1) If a landlord or tenant does not comply with this *Act*, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.
- 7(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this *Act*, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Section 67 of the Residential Tenancy Act states that without limiting the general authority in section 62(3) [*director's authority*], if damage or loss results from a party not complying with this *Act*, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

I accept the Tenant's undisputed evidence that he provided the Landlord with one month's notice to end his tenancy and that he vacated the property by September 1, 2016. I further accept the Landlord had no legal entitlement to retain the \$650.00 payment that was paid in advance directly to her by Income Assistance. Accordingly, I grant the Tenant's application in the amount of **\$650.00**, pursuant to section 67 of the *Act*.

Regarding the request for the return of the security deposit I first turned to section 38(1) of the *Act* which stipulates that 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 either repay, as provided in subsection (8), any security deposit or pay

damage deposit to the tenant with interest calculated in accordance with the regulations; or make an application for dispute resolution claiming against the security deposit or pet damage deposit.

Then I considered section 39 of the *Act* which states that despite any other provision of this Act, if a tenant does not give a landlord their forwarding address in writing, within one year after the end of the tenancy, the landlord may keep the security deposit or the pet damage deposit, or both, and the right of the tenant to the return of the security deposit or pet damage deposit is extinguished.

From his own submissions the Tenant stated he had not provided his forwarding address to the Landlord prior to filing his application for Dispute Resolution. Therefore, I concluded that at the time the Tenant's application for Dispute Resolution was filed the Landlord was under no obligation to return the security deposit, as they had not yet been served with the Tenant's forwarding address in writing. Accordingly, I dismiss the request for the return of security deposit, with leave to re-apply.

### Conclusion

The Tenant was partially successful with their application and was issued a Monetary Order in the amount of **\$650.00**. The Tenant has leave to reapply for the return of his security deposit if the Landlord fails to return his deposit after he has served her with his forwarding address.

This decision is final, legally binding, and 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 01, 2017

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Residential Tenancy Branch