



## Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

### **DECISION**

Dispute Codes                      MNSD, MNDC, FF

#### Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* ("Act") for:

- a monetary order for money owed or compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("Regulation") or tenancy agreement, pursuant to section 67;
- authorization to retain the tenant's security deposit, pursuant to section 38; and
- authorization to recover the filing fee for this application, pursuant to section 72.

The tenant did not attend this hearing, which lasted approximately 31 minutes. The landlord attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The landlord testified that she served the tenant with a copy of the landlord's application for dispute resolution hearing package by way of registered mail on October 6, 2016. The landlord provided a Canada Post receipt and tracking number to confirm service. Initially, the landlord stated that she sent the package to an address provided by the tenant in his application for tenancy, signed on September 8, 2016. When I asked the landlord why she did not serve it to the more recent forwarding address provided by the tenant on September 30, 2016, she claimed that she did. She testified that she made a mistake when she first said it was served to the older address. As I find that the landlord was confused and made an error in her testimony, I accept that she provided the package to the tenant at the more recent forwarding address provided by him. In accordance with sections 89 and 90 of the *Act*, I find that the tenant was deemed served with the landlord's application on October 11, 2016, five days after its registered mailing.

#### Issues to be Decided

Is the landlord entitled to a monetary award for money owed or compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement?

Is the landlord entitled to retain the tenant's security deposit?

Is the landlord entitled to recover the filing fee for this application?

### Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of the landlord, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the landlord's claims and my findings are set out below.

The landlord testified regarding the following facts. This month-to-month tenancy began on September 8, 2016 when the tenant signed the tenancy agreement and paid a security deposit of \$500.00 to the landlord. The landlord continues to retain this deposit. The landlord did not sign the tenancy agreement until September 30, 2016. Monthly rent of \$3,000.00 was due on the first day of each month. A \$1,500.00 security deposit was due as per the agreement but the landlord said that the tenant never fully paid it. The rental unit is approximately 110 years old, the upper portion of a duplex, about 1800 square feet, newly renovated, with two bedrooms and two bathrooms.

The landlord claimed that the tenant telephoned her on September 29, 2016, to advise that he would not be moving into the rental unit. The landlord said that she received a letter, dated September 30, 2106, from the tenant on the same date, asking for the return of his security deposit of \$500.00 and providing a forwarding address.

The landlord seeks a monetary order of \$3,000.00 for a loss of October 2016 rent and to offset the tenant's security deposit of \$500.00 against this amount. She said that she applied for the loss because the Residential Tenancy Branch information officers told her that she was entitled to it. The landlord also seeks to recover the \$100.00 filing fee paid for her application.

The landlord seeks a loss of rent for October 2016 because she said that she was unable to re-rent the unit for that month because the tenant gave late notice that he would not be moving into the unit. Initially, the landlord testified that she "didn't do anything" after she received notice from the tenant that he was not going to move in. Then, the landlord testified that she looked for potential tenants "right away" and posted an online advertisement on one website and posted a sign in front of the rental unit building on September 30, 2016. The landlord said that she did not provide a copy of the advertisement because she did not have a printer. When I asked her whether she could have gone to a library to print it out, she claimed that she had not thought of that. The landlord said that the sign in front of the building just stated that there was an upper duplex for rent with the landlord's phone number for contact. The landlord stated that the online advertisement had details of the rental unit and the location, as well as the rental price of \$3,000.00.

The landlord claimed that she showed the unit about 8 times to people before re-renting it. She said that she signed a tenancy agreement with the new tenants for a tenancy beginning November 1, 2016 for \$3,000.00 rent per month for a one-year fixed term period. Initially, the

landlord stated that the new tenants signed it on October 18, then she claimed it was October 14, 2016. She confirmed that she had this agreement in front of her during the hearing but did not realize that she had to send a copy for this hearing.

### Analysis

Section 45(1) states that a tenant can end a month-to-month tenancy by providing one month's written notice to the landlord on the day before rent is due. The tenant failed to do that in this case, as he provided verbal notice on September 29, 2016, that he would not be moving into the unit on October 1, 2016.

Section 7(1) of the *Act* establishes that a tenant who does not comply with the *Act*, *Regulation* or tenancy agreement must compensate the landlord for damage or loss that results from that failure to comply. However, section 7(2) of the *Act* places a responsibility on a landlord claiming compensation for loss resulting from a tenant's non-compliance with the *Act* to do whatever is reasonable to minimize that loss.

Pursuant to section 67 of the *Act*, when a party makes a claim for damage or loss, the burden of proof lies with the applicant to establish the claim. To prove a loss, the landlord must satisfy the following four elements on a balance of probabilities:

1. Proof that the damage or loss exists;
2. Proof that the damage or loss occurred due to the actions or neglect of the tenant in violation of the *Act*, *Regulation* or tenancy agreement;
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
4. Proof that the landlord followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

Overall, I found that the landlord changed her testimony throughout the hearing. The landlord provided conflicting testimony regarding when the new tenants signed the tenancy agreement and when she advertised the rental unit. In fact, the landlord signed the written tenancy agreement on September 30, 2016, the day after the tenant provided notice that he would not be moving in on September 29, 2016. I find that this was an inadvertent omission by the landlord. I find that a tenancy was created on September 8, 2016, when the tenant signed the written tenancy agreement and paid a partial security deposit to the landlord.

Based on the evidence presented, I find that the landlord failed to mitigate her losses in her efforts to re-rent the unit to prospective tenants. The landlord did not provide a copy of any advertisements for re-rental. The landlord did not provide a copy of the new tenancy agreement signed with the new tenants. The landlord had all of these documents in front of her during the hearing.

Accordingly, for the reasons stated above, I dismiss the landlord's application for a rental loss of \$3,000.00 for October 2016, on the basis that I find that the landlord failed to fully mitigate her losses. I also dismiss the landlord's application to retain the tenant's security deposit of \$500.00 to offset the loss of rent for October 2016.

The landlord continues to hold the tenant's security deposit of \$500.00. Over the period of this tenancy, no interest is payable. I find that the tenant is entitled to the return of the deposit from the landlord, as per Residential Tenancy Policy Guideline 17, which requires me to deal with the deposit when the landlord has applied to keep it, including the return of it to the tenant without the tenant's application.

As the landlord was unsuccessful in her application, I find that she is not entitled to recover the \$100.00 filing fee from the tenant.

### Conclusion

The landlord's entire application is dismissed without leave to reapply.

I issue a monetary order in the tenant's favour in the amount of \$500.00 against the landlord. The landlord must be served with this Order as soon as possible. Should the landlord fail to comply with this Order, this 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: April 07, 2017

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Residential Tenancy Branch