



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes**      FF, MNR, MNDC, MNSD, FF

### **Introduction**

The Application for Dispute Resolution filed by the landlord makes the following claims:

- a. A monetary order in the sum of \$7131.09 for unpaid rent and utilities
- b. An order to keep the security deposit.
- c. An order to recover the cost of the filing fee

The Application for Dispute Resolution filed by the Tenant makes the following claims:

- a. A monetary order in the sum of \$7000
- b. An order for the return of the security deposit.
- c. 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 filed by each party was sufficiently served on the other by registered mail. 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 landlord is entitled to a monetary order and if so how much?
- b. Whether the landlord is entitled to retain all or a portion of the security deposit/pet deposit?
- c. Whether the landlord is entitled to recover the cost of the filing fee?
- d. Whether the tenants are entitled to a monetary order and if so how much?
- e. Whether the tenants are entitled to an order for the return of their security deposit?

f. Whether the tenants are entitled to recover the cost of the filing fee?

Background and Evidence

On October 13, 2016 the landlord and EC entered into a 6 month fixed term written tenancy agreement that the tenancy would start on November 1, 2016 and end on April 30, 2017. The tenancy agreement provided that the tenant(s) would pay rent of \$3500 per month payable in advance on the first day of each month. The security deposit was \$1750.

The tenants paid the security deposit and rent for November shortly after signing the tenancy agreement.

On October 21, 2016 the parties met to conduct an inspection. There was a problem with the shower in one of the washrooms. The tenant stated they were not interested in moving in given this problem. Two previous plumbers had stated they were unable to fix this.

The landlord had previously texted the following message to the tenant "...If this plumber still cannot fix it, you can either accept two washrooms or get your deposit and November rent back."

The plumber was unable to fix it. The tenants advised the landlord they were not intending to proceed with the tenancy. They requested a Mutual Agreement to End the Tenancy but the landlord stated she was too busy and had to go to a medical appointment. The tenants immediately found another rental unit to move into.

That evening the landlord texted the tenant advising that the third plumber was able to fix it. The tenant responded stating they had found another place to live but as a gesture of goodwill the landlord could keep the deposit but they wanted the return of November's rent.

There was exchange of e-mail etc. The landlord mailed the key to the tenant who promptly returned it. The landlord mailed the key a second time but it was not returned for several weeks. The tenant testified she was overseas tending to her mother who was not in good health.

The evidence produced by the landlord indicates she advertised on October 21, 2016 (after the tenant advised they were not moving in), November 28 and 30, 10 times in

December and 15 times in January. Eventually a new tenant was found. That tenant took possession on February 1, 2017.

Both claims are disputed. The landlord submits the parties did not mutually agree to end the tenancy in writing as provided in the Act and is responsible for the rent for December, January (25 days) and the utilities. In effect the tenant submits they can rely on the principle of promissory estoppel (the landlord represented they could receive the return of their deposit and reimbursement of the rent for November if the plumber attending on that date was unable to fix the problem) and the failure of the landlord to mitigate by promptly looking for a new tenant.

Settlement:

At the end of the hearing the parties reached a settlement and they asked that I record the settlement pursuant to section 63(2) of the Act as follows:

- a. The landlord shall retain the security deposit and the rent previously paid for November 2016.
- b. This is a full and final settlement and each party releases and discharges the other from all further claims with respect to this tenancy.

As a result of the settlement I ordered that the landlord shall retain the rent paid for November 2016 and the security deposit. All other claims filed by each party are dismissed without liberty to re-apply.

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: May 26, 2017

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Residential Tenancy Branch