



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes                      MNSD, MNDC

### Introduction

This hearing dealt with a tenant's application for a Monetary Order for return of the security deposit and pet damage deposit paid to the landlord and recovery of other damages and losses under the Act, regulations or tenancy agreement. Both parties appeared or were represented at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

At the outset of the hearing I confirmed that the landlord received the tenant's application and evidence. I confirmed that the landlord had not submitted any evidence or written submissions in response to the tenant's claims. Rather, the landlord chose to provide oral testimony only.

The tenant stated that she gathered more evidence since filing but she has not submitted it to the Residential Tenancy Branch or the landlord. I informed the tenant that an applicant has up to 14 clear days before the hearing date to file an Amendment and all evidence as provided in the Rules of Procedure. Considering the tenant filed in November 2016 I was of the view the tenant has had ample opportunity to submit additional evidence and an Amendment but that she failed to do so. Accordingly, I informed the tenant that I would only consider the evidence and the amounts she had claimed at the time of filing.

It should be noted that during the hearing I gave my preliminary findings to the parties. This written decision replaces those preliminary findings.

### Issue(s) to be Decided

1. Is the tenant entitled to return of the security deposit and pet damage deposit?
2. Has the tenant established an entitlement to recovery of other damages or losses from the landlord?

### Background and Evidence

The parties were in agreement with the following facts:

- The landlord advertised the rental unit for rent online and the tenant viewed the unit in October 2016. The tenant subsequently communicated to the landlord that she would like to rent the unit.
- The tenant paid \$200.00 to the landlord on October 18, 2016 as a pet damage deposit, or part thereof.
- The tenant paid \$400.00 to the landlord on October 28, 2016 as a security deposit, or part thereof.
- The monthly rent was to be \$1,000.00 payable on November 1, 2016.
- The landlord did not prepare a written tenancy agreement and present it to the tenant when the deposits were taken or at any other time.
- Receipts were issued for the two deposit payments however, the receipts do not indicate any terms of tenancy.
- The tenant did not have possession of the rental unit.
- The landlord is still holding both of the tenant's deposits.

Below, I have summarized the parties' disputed positions.

The tenant stated the landlord wanted \$2,000.00 from her for first month's rent of \$1,000.00 plus \$500.00 for a security deposit plus \$500.00 for a pet damage deposit but that the landlord had agreed the tenant could make partial payments as follows: \$1,000.00 rent and \$500.00 security deposit to be paid by November 1, 2016 and the remainder of the pet damage deposit to be paid in installments after the tenancy started. The landlord testified that the tenant was required to pay \$500.00 for a security deposit, \$200.00 for a pet damage deposit and \$1,000.00 for rent on November 1, 2016.

The parties were in dispute as to when the tenant was to be provided possession of the rental unit. The tenant testified that she was to be provided possession of the rental unit on October 28, 2016 although rent would not be payable until November 1, 2016. The landlord testified that the tenant was entitled to possession of the rental unit on November 1, 2016.

The parties were in dispute as to whether the tenant moved some of her possessions into the rental unit on October 28, 2016. The tenant testified that the landlord initially permitted the tenant to store some of personal possessions on the exterior of the house. The tenant purchased a metal storage shed and had it delivered to the residential property. The tenant testified that the landlord subsequently expressed concern about mice getting into her possessions and permitted the tenant to move some possessions in to the rental unit on October 28, 2016. The tenant submitted that when she presented the landlord \$400.00 on October 28, 2016 the landlord stated she wanted a \$500.00 payment but the tenant reminded her that she had until November 1, 2017 to pay the balance of the security deposit. Also on that date, the tenant's friend made a comment that the tenant would have no more money to feed her child if she gave all her money to the landlord. The tenant's friend also made a comment that the landlord had done a poor job painting the rental unit. The landlord acknowledged that she was in the process of painting but denied the tenant was permitted or moved any

possessions into the rental unit. The landlord testified that the tenant was permitted and did store some items on the exterior of the property.

The tenant was on her way to the residential property with a moving truck on October 29, 2016 with the intention of moving her possessions in. The tenant was able to reach the landlord on the phone and the parties had a discussion. The tenant stated it was their agreement that the tenant could move in early. The landlord stated that the tenant was not permitted to move in until November 1, 2016. The tenant stated she left her possessions in the moving truck and returned to the property on October 31, 2016. On October 31, 2016 the landlord was not home again but the landlord's daughter phoned her and apprised the landlord of the situation and the two parties had a conversation on the telephone again. The landlord would not permit the tenant to move her possessions in and told the tenant she would have to wait until November 1, 2016 but the tenant stated she would not have the help of her friends on November 1, 2016 and that was not what the landlord and tenant had agreed to.

The parties were in dispute as to whether the tenant was permitted to move in on November 1, 2016. The tenant testified that she contacted the landlord on November 1, 2016 and the landlord informed her she would not be permitting her to move in and that she would have to pick up her possessions from the property by the following day or they would be out on the curb. The tenant stated that she had \$900.00 to give the landlord but that the landlord had the landlord let her move in. Since the landlord told her she could not move in the tenant proceeded to rent a storage unit on November 1, 2016. The landlord testified that she did not hear from the tenant on November 1, 2016 but that on November 2, 2016 she offered the rental unit to the tenant and the tenant declined to take it.

The parties were in agreement that the police were called by the tenant and they stood by while the tenant removed her possessions, including the metal shed, from the property on November 2, 2016. The police went in the rental unit to confirm that there were no possessions belonging to the tenant in the rental unit. The tenant moved her possessions to the storage unit and returned the moving truck on November 3, 2016 and started living with a friend. The tenant testified that when she retrieved her possessions from the property the landlord had already moved all of the possessions that had been inside the rental unit to the exterior of the house. The landlord stated that the tenant's possessions were never in the rental unit.

The tenant maintains the landlord breached their agreement and the *Residential Tenancy Act* and the tenant seeks to recover costs to move her possessions to and from the rental unit and the storage unit, including the moving truck rental and gas, moving blankets, storage unit rent, the cost of the metal shed and locks, and groceries in the sum of \$1,469.17. The tenant also seeks to recover the security deposit and pet damage deposit of \$600.00 she paid to the landlord. The tenant provided receipts for most of the items claimed.

The landlord was of the position that she did not breach their agreement or the Act so she is not liable to pay the damages sought by the tenant. The landlord acknowledged that the tenant's

cat was never in the rental unit and she has no claim against the pet damage deposit; however, the landlord stated she intends to make a claim against the tenant and her security deposit for loss of rent for November 2016.

During the hearing, I pointed out to the parties that much of this dispute could have been avoided had a written tenancy agreement been prepared and executed at the time the deposit(s) were paid. The landlord did not appear to acknowledge or take any responsibility for her contribution to this dispute in failing to prepare a written tenancy agreement when the tenancy formed, as required under the Act.

### Analysis

The parties were clearly in dispute as to when the tenancy was to start. I am of the view that this could have been avoided had the landlord prepared a written tenancy agreement as she was required to do under section 13(1) of the Act. Had the tenancy agreement been prepared and executed the parties would have evidence to show when the tenancy was to start, as section 13(2) requires the start date to be included in the written tenancy agreement.

As provided under section 20 of the Act, a landlord must not collect a pet damage deposit or security deposit unless a tenancy has formed as provided under section 20 of the Act. Accordingly, I find that the landlord should have presented a tenancy agreement to the tenant no later than October 18, 2016 as this is the date the landlord accepted a deposit from the tenant.

A landlord cannot avoid obligations under the tenancy agreement or the Act by not preparing a written tenancy agreement. Section 16 of the Act provides that the rights and obligations of a landlord and tenant commence as soon as a tenancy agreement has been entered into. Since the landlord accepted a deposit on October 18, 2016 both parties became obligated at that point to fulfill their respective obligations under their agreement and the Act. One of the landlord's primary obligations is to provide the tenant with possession of the rental unit. One of the tenant's primary obligations is to pay the rent and deposits when and in the amounts required.

Once a tenancy has formed, as it did in this case, it must be ended in one of the ways permitted under section 44 of the Act and a landlord does not have the right to bring a tenancy to an end by preventing the tenant from having possession of the rental unit.

Below, I have reproduced relevant sections, or parts thereof, the *Residential Tenancy Act*, with my emphasis underlined:

### **Requirements for tenancy agreements**

- 13 (1) A landlord must prepare in writing every tenancy agreement entered into on or after January 1, 2004.

(2) A tenancy agreement must comply with any requirements prescribed in the regulations and must set out all of the following:

- (a) the standard terms;
- (b) the correct legal names of the landlord and tenant;
- (c) the address of the rental unit;
- (d) the date the tenancy agreement is entered into;
- (e) the address for service and telephone number of the landlord or the landlord's agent;
- (f) the agreed terms in respect of the following:
  - (i) the date on which the tenancy starts;
  - (ii) if the tenancy is a periodic tenancy, whether it is on a weekly, monthly or other periodic basis;
  - (iii) if the tenancy is a fixed term tenancy,
    - (A) the date the tenancy ends, and
    - (B) whether the tenancy may continue as a periodic tenancy or for another fixed term after that date or whether the tenant must vacate the rental unit on that date;
  - (iv) the amount of rent payable for a specified period, and, if the rent varies with the number of occupants, the amount by which it varies;
  - (v) the day in the month, or in the other period on which the tenancy is based, on which the rent is due;
  - (vi) which services and facilities are included in the rent;
  - (vii) the amount of any security deposit or pet damage deposit and the date the security deposit or pet damage deposit was or must be paid.

### **Start of rights and obligations under tenancy agreement**

- 16 The rights and obligations of a landlord and tenant under a tenancy agreement take effect from the date the tenancy agreement is entered into, whether or not the tenant ever occupies the rental unit.

### **Landlord prohibitions respecting deposits**

- 20 A landlord must not do any of the following:

- (a) require a security deposit at any time other than when the landlord and tenant enter into the tenancy agreement;
- (b) require or accept more than one security deposit in respect of a tenancy agreement;
- (c) require a pet damage deposit at any time other than
  - (i) when the landlord and tenant enter into the tenancy agreement, or
  - (ii) if the tenant acquires a pet during the term of a tenancy agreement, when the landlord agrees that the tenant may keep the pet on the residential property;
- (d) require or accept more than one pet damage deposit in respect of a tenancy agreement, irrespective of the number of pets the landlord agrees the tenant may keep on the residential property;
- (e) require, or include as a term of a tenancy agreement, that the landlord automatically keeps all or part of the security deposit or the pet damage deposit at the end of the tenancy agreement.

### **How a tenancy ends**

- 44 (1) A tenancy ends only if one or more of the following applies:
- (a) the tenant or landlord gives notice to end the tenancy in accordance with one of the following:
    - (i) section 45 *[tenant's notice]*;

- (i.1) section 45.1 *[tenant's notice: family violence or long-term care]*;
  - (ii) section 46 *[landlord's notice: non-payment of rent]*;
  - (iii) section 47 *[landlord's notice: cause]*;
  - (iv) section 48 *[landlord's notice: end of employment]*;
  - (v) section 49 *[landlord's notice: landlord's use of property]*;
  - (vi) section 49.1 *[landlord's notice: tenant ceases to qualify]*;
  - (vii) section 50 *[tenant may end tenancy early]*;
- (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;
- (c) the landlord and tenant agree in writing to end the tenancy;
- (d) the tenant vacates or abandons the rental unit;
- (e) the tenancy agreement is frustrated;
- (f) the director orders that the tenancy is ended.

### **Director's authority respecting dispute resolution proceedings**

62 (1) The director has authority to determine

- (a) disputes in relation to which the director has accepted an application for dispute resolution, and
- (b) any matters related to that dispute that arise under this Act or a tenancy agreement.

(2) 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.

(3) The director may make any order necessary to give effect to the rights, obligations and prohibitions under this Act, including an order that a landlord or tenant comply with this Act, the regulations or a tenancy agreement and an order that this Act applies.

While I was provided a considerable amount of disputed verbal testimony as to the events that took place, I find the landlord's testimony that she offered the tenant possession of the unit on November 2, 2016 to be unbelievable given the circumstances. Accordingly, I find I prefer the tenant's testimony that the landlord informed her she would not be permitted to move in on or after November 1, 2016 and the tenant was denied possession of the rental unit which is a violation of the Act.

Despite finding the landlord in breach of the Act, I am also of the view that the tenant would not have fulfilled her obligations under the tenancy agreement. The parties had both testified that the tenant was required to pay \$1,000.00 in rent and a security deposit of \$500.00 by November 1, 2016; yet, the tenant had only paid \$400.00 of the security deposit and testified that she only had \$900.00 on November 1, 2016. Accordingly, I am of the view that neither party is entirely faultless.

I further find that the parties did not have a meeting of the minds as to when the tenancy was to start, which I consider to be a material term of a tenancy agreement; and, both parties were in breach of the Act or their agreement. Accordingly, I find the most equitable resolution is to unwind the agreement by ordering the following, pursuant to the authority afforded me under section 62 of the Act.

I order as follows:

- the end of the tenancy agreement effective November 1, 2016 as provided under section 44(1)(f) of the Act;
- the landlord shall return the \$600.00 she collected for deposits to the tenant; and,
- each party to bear the own respective losses, including but not limited to: moving and storage costs for the tenant and loss of rent for the landlord.

In light of the above, I provide the tenant with a Monetary Order in the sum of \$600.00 and both parties are now precluded from pursuing any other Application for Dispute Resolution against the other party.



Conclusion

I have found that the parties did not have a meeting of the minds with respect to a material term of their tenancy agreement and I have issued orders that effectively repudiate the verbal tenancy agreement. I have ordered the tenancy to have ended effective November 1, 2016. I have ordered the landlord to return the \$600.00 she collected in deposits to the tenant. I have ordered that both parties are to bear their own respective losses and both parties are precluded from making any other Application for Dispute Resolution seeking damages from the other party.

The tenant is provided a Monetary Order in the amount of \$600.00 to serve and enforce upon the landlord.

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: June 13, 2017

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Residential Tenancy Branch