



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes: MNDC MNSD OLC FF

### **Introduction:**

Both parties attended the hearing and gave sworn testimony. Each confirmed receipt of each other's Application for Dispute Resolution by registered mail. I find the documents were legally served pursuant to section 89 of the Act for the purposes of this hearing. The landlord applies pursuant to the *Residential Tenancy Act* (the Act) for orders as follows:

- a) A monetary order pursuant to Sections 44, 45 and 67 for compensation for breach of a fixed term lease;
- b) An Order to retain the security and pet damage deposits pursuant to Section 38; and
- c) An order to recover the filing fee pursuant to Section 72.

The tenant applies pursuant to the Act for orders as follows:

- d) For a return of twice the security deposit pursuant to section 38; and
- f) To recover the filing fee for this application.

### **Preliminary Issues:**

It was noted that the landlord used his legal name on his Application and on the tenancy agreement but he sometimes signed or sent emails under an English first name. The Decision and Order are amended to show he is sometimes known under the English first name he uses. It was also noted that the female applicant is not a tenant but the daughter of the tenant. The Decision and Order are amended to correspond with the tenancy agreement in file.

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

The tenant vacated the unit on December 22, 2016. Has the landlord proved on the balance of probabilities that the tenant breached a fixed term lease and caused him rental loss? If so, what is the amount of the compensation and is the landlord entitled to recover filing fees also?

Is the tenant entitled to twice the security deposit refunded and to recover filing fees for the application?

**Background and Evidence:**

Both parties with the daughter representing the male tenant attended the hearing and were given opportunity to be heard, to present evidence and to make submissions. It is undisputed that the tenancy commenced June 1, 2016 on a fixed term lease expiring May 31, 2017. Rent was \$2200 a month and a pet damage deposit and security deposit totalling \$2200 was paid. It is undisputed that the tenant vacated the property in December 2016 and signed a Mutual Agreement to End Tenancy on December 22, 2016. He also signed an agreement that the landlord could keep the deposits of \$2200 for the rental loss. It was noted that the tenant's 5 post dated cheques were returned.

The tenant's daughter said her father only signed the agreement for the landlord to keep the deposits because the landlord might have kept his 5 post dated cheques if he had not. Now he requests double his deposits back for the home was cleaned beyond the move-in condition. The tenant said they had to move out early because of a mouse problem.

The landlord says he only requests to keep the deposits as agreed and he suffered much more rental loss. He did not re-rent until April 1, 2017.

In evidence is the tenancy agreement, the Mutual Agreement to End Tenancy, the agreement for the landlord to keep the deposits signed by both parties and a subsequent demand from the tenant to obtain the refund of the deposits. On the basis of the documentary and solemnly sworn evidence presented at the hearing, a decision has been reached.

**Analysis**

The onus is on the applicant to prove on a balance of probabilities their claim. I find the landlord has satisfied the onus. I find there was a fixed term tenancy which the tenant breached by requiring to move out early. I find the weight of the evidence is that there was some negotiation resulting in a Mutual Agreement to End Tenancy which released the tenant from further rent payments and in return, there was a written agreement signed by both parties that the landlord could retain the security and pet damage deposits for the rental loss suffered by the landlord. I find the landlord entitled to retain these deposits in accordance with the agreement.

As discussed with the tenant's daughter in the hearing, if the tenant had a mouse problem or was concerned about the return of his post dated cheques, he had the remedy of applying for dispute resolution to resolve the problems.

I find the tenant's Application for a refund of the deposits is without merit for he agreed at the time that the landlord could keep the deposits for his rental loss. I dismiss the Application of the tenant.

**Conclusion:**

I find the landlord entitled to a monetary order as calculated below and to retain the pet damage and security deposits as agreed. I find him entitled to recover the filing fee.

I dismiss the application of the tenant in its entirety without leave to reapply and I find he is not entitled to recover filing fees for his application.

Calculation of Monetary Award:

Agreement to keep deposits for rental loss	2200.00
Filing fee	100.00
Less pet and security deposits retained legally	-2200.00
<b>Monetary Order in favour of Landlord</b>	<b>100.00</b>

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 27, 2017

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Residential Tenancy Branch