



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNR, MNSD, MNDC, OLC, FF

### Introduction

This hearing was convened in response to an application by the Tenant and an application by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”).

The Tenant applied on December 14, 2016 for:

1. A Monetary Order for compensation - Section 67;
2. An Order for the return of double the security deposit - Section 38;
3. An Order for the Landlord's compliance - Section 62; and
4. An Order to recover the filing fee for this application - Section 72.

The Landlord applied on May 4 and May 10, 2017 for:

1. A Monetary Order for unpaid rent - Section 67;
2. An Order to retain the security deposit - Section 38; and
3. An Order to recover the filing fee for this application - Section 72.

The Landlord and Tenant were each given full opportunity under oath to be heard, to present evidence and to make submissions.

### Preliminary Matter

It is noted that the Landlord made two identical applications and paid a filing fee for each. The Landlord states that the first application was made in error, that the Tenant was not served with the first application and that the Landlord does not claim the filing fee from that first application.

Issue(s) to be Decided

Is the Tenant entitled to return of double the security deposit and recovery of the filing fee?

Is the Landlord entitled to unpaid rent and recovery of the filing fee?

Background and Evidence

The following are agreed facts: The tenancy of a basement suite in the Landlord's home started on August 1, 2016 and ended on October 31, 2016. Rent of \$800.00 was payable on the first day of each month. At the outset of the tenancy the Landlord collected \$400.00 as a security deposit. No move-in or move-out inspection was offered by the Landlord and no inspections or reports were completed. The Tenant has not provided her forwarding address to the Landlord.

The Tenant states that on September 30, 2016 the Tenant gave the Landlord notice to end the tenancy for October 31, 2016 by way of a social media site messenger. The Tenant states that they rarely communicated through this messenger. The Tenant states that she selected the "seen" button on the message and the message was noted as "seen". The Tenant states that she did not select the "seen" option for the second message sent on the same date so this message is not noted as "seen". Both Parties provided copies of the messenger communication.

The Landlord states that no message of a notice end to tenancy was received by the Landlord on its messenger. The Landlord states others, such as her daughter, frequently access the site from the Landlord's phone. The Landlord states that perhaps someone using her site saw the message and that the Landlord was not notified that there was any unseen message on her site. The Landlord states that she only found out on or about October 26, 2016 about the move-out when she saw the Tenant packing. The Landlord states that the unit was advertised immediately at the same rental rate but that no tenant was found until December 1, 2016. The Landlord claims lost rental income of \$800.00. The Landlord withdraws her claim to \$400.00 for an unclean unit.

### Analysis

Section 52 of the Act provides that in order to be effective a tenant's notice to end tenancy must:

- be in writing,
- be signed and dated by tenant giving the notice,
- give the address of the rental unit, and
- state the effective date of the notice.

Based on the undisputed evidence that the Tenant sent the notice to end tenancy by messenger, considering the method of sending this notice was not a regular method of communication with the Landlord, and given that there is no evidence that the Landlord actually received the notice, I find that the notice was not in writing as required by the Act. As a result I find that the Tenant did not provide an effective notice to end the tenancy.

Section 38 of the Act provides that within 15 days after the later of the date the tenancy ends, and the date the landlord receives the tenant's forwarding address in writing, the landlord must repay the security deposit or make an application for dispute resolution claiming against the security deposit. Where a landlord fails to comply with this section, the landlord must pay the tenant double the amount of the security deposit. Based on the Tenant's evidence that no forwarding address was ever provided to the Landlord I find that the Landlord was not required to act in relation to the security deposit and that the Tenant is therefore not entitled to return of double the security deposit. I dismiss the claim. As the Tenant's claim has been dismissed I decline to award recovery of the filing fee and in effect the Tenant's application is dismissed in its entirety.

Section 7 of the Act provides that where a tenant does not comply with the Act, regulation or tenancy agreement, the tenant must compensate the landlord for damage or loss that results. This section further provides that where a landlord or tenant claims

compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement the claiming party must do whatever is reasonable to minimize the damage or loss. Based on the undisputed evidence that the Landlord did not learn about the end of the tenancy until on or about October 26, 2016 and considering the Landlord's undisputed evidence of immediately advertising the unit for the same rental rate, I find that the Landlord has substantiated the unpaid rent claimed and has provided evidence of reasonable mitigation. As a result I find that the Landlord is entitled to **\$800.00**. As the Landlord has been successful with its application I find that the Landlord is also entitled to recovery of the **\$100.00** filing fee for a total entitlement of **\$900.00**. Deducting the security deposit of **\$400.00** from this entitlement leaves **\$500.00** owed by the Tenant to the Landlord.

#### Conclusion

The Tenant's application is dismissed.

I Order the Landlord to retain the security deposit plus interest of \$400.00 in partial satisfaction of the claim and I grant the Landlord an order under Section 67 of the Act for the remaining amount of **\$500.00**. If necessary, this order may be filed in the Small Claims 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: June 19, 2017

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Residential Tenancy Branch