



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes

MNSD, FF

### Introduction

On January 13, 2017, the Applicant submitted an Application for Dispute Resolution seeking compensation from the Respondent for an illegal application fee and to recover the cost of the filing fee.

The matter was set for a conference call hearing. The Tenant appeared; however, the Landlords did not. The Tenant testified that she served the Landlord, Mr. R.O. with the Notice of Hearing using Canada Post registered mail on January 19, 2017. The Tenant provided a copy of the registered mail tracking number in support of her testimony. I find that the Landlord, Mr. R.O. was served with the Notice of Hearing in accordance with sections 89 and 90 of the Act.

The hearing process was explained and the Tenant was asked if she had any questions. The Tenant provided affirmed testimony and was provided the opportunity to present her evidence, orally and in written and documentary form, and make submissions to me.

### Preliminary Issues

The Tenant did not provide a copy of a tenancy agreement. She testified that she would fax a copy of the tenancy agreement to the Residential Tenancy Branch after the hearing. A fax copy of a tenancy agreement was received on July 4, 2017.

### Issue to be Decided

Is the Tenant entitled to a monetary order to recover an illegal fee?

### Background and Evidence

The Tenant testified that she completed an application for tenancy and paid a \$100.00 application fee to the Landlord on August 7, 2016.

The Tenant testified that she also signed a tenancy agreement with the Landlord on August 7, 2016. She testified that the tenancy was a 6 month fixed term tenancy to start on September 1, 2016, and to end on February 1, 2017.

The Tenant was to pay rent in the amount of \$975.00 per month. The Tenant testified that she did not pay a security deposit.

The Tenant testified that on August 8, 2016, she notified the Landlord that she is not taking the rental unit.

The Tenant testified that she asked the Landlord to return the \$100.00 application fee. She testified that the Landlord sent her a letter stating that because she did not honor the tenancy agreement, they are not going to return the \$100.00 fee. The Tenant provided a copy of the letter from the Landlord.

The Tenant is also seeking to recover the \$100.00 fee for the cost of the Application for Dispute Resolution.

The Tenant testified that she would send the Residential Tenancy Branch a copy of the tenancy agreement that was signed by both parties after the hearing.

### Analysis

Section 16 of the Act states that 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.

Section 15 of the states that a Landlord must not charge a person anything for:

- (a) accepting an application for a tenancy,*
- (b) processing the application,*
- (c) investigating the applicant's suitability as a tenant, or*
- (d) accepting the person as a tenant.*

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

I find that the parties entered into a tenancy agreement and the rights and obligations of the parties took effect on August 7, 2016.

I accept the Tenants testimony that she paid the Landlord a \$100.00 application fee.

I find that the Landlord breached section 15 of the Act, by charging a person a fee for accepting or processing an application. I find that the Tenant did not pay a security deposit, and that the \$100.00 she paid was an application fee.

I award the Tenant the amount of \$100.00 for the application fee paid to the Landlords.

Section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. The Tenant was successful with her claim. I order the Landlord to repay the \$100.00 fee that the Tenant's paid to make application for dispute resolution.

The Tenant is granted a monetary order in the amount of \$200.00. This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that court. The Landlord is cautioned that costs of such enforcement are recoverable from the Landlord.

#### Conclusion

The Landlords charged the Tenant an illegal application fee.

The Tenant is granted a monetary order in the amount of \$200.00. This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that court. The Landlord is cautioned that costs of such enforcement are recoverable from 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: July 05, 2017

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Residential Tenancy Branch