



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      FF MNR MNSD

### Introduction

This hearing dealt with the landlords' application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a Monetary Order pursuant to section 67 of the *Act*;
- an Order to retain the security or pet deposit pursuant to section 38 of the *Act*,  
and
- a return of the filing fee pursuant to section 72 of the *Act*.

Both the landlords and the tenant attended the hearing. Both parties were given a full opportunity to be heard, to present their sworn testimony and to make submissions.

The tenant confirmed receipt of the landlords' Application for Dispute Resolution (Landlord's Application) and evidentiary package which was sent by Canada Post Registered Mail on or around June 18, 2017. Pursuant to sections 88 & 89 of the *Act*, the tenant is found to have been duly served with these documents.

### Issue(s) to be Decided

Can the landlords retain the security deposit?

Are the landlords entitled to a Monetary Order?

Can the landlords recover the filing fee?

### Background and Evidence

The landlords testified that this tenancy was comprised of two separate fixed-term tenancies. The first running from July 1, 2015 to June 30, 2016 with the second running

from July 1, 2016 to June 30, 2017. The tenant questioned the validity of this second fixed-term tenancy alleging that it was entered in to under duress and noting that the first fixed-term tenancy was set to convert to a month-to-month tenancy following its conclusion on June 30, 2016.

Rent for the first fixed-term tenancy was \$1,325.00 per month, while rent for the second fixed-term tenancy was \$1,375.00 per month. A security deposit of \$662.50 collected at the outset of the first tenancy continues to be held by the landlords.

The landlords explained that a letter was received by them via Canada Post ordinary mail on May 1, 2017. This letter, written by the tenant, provided the landlords written notice of his family's intention to vacate the rental property for May 31, 2017. The landlords are seeking a Monetary Order for the unpaid month that remained outstanding on the fixed-term tenancy signed by the parties. They said that following the tenant's departure it was difficult to re-rent the property. The landlords described posting an ad on Craigslist on May 2, 2017 advertising the property. They noted that the property was difficult to re-rent as it was only offered as a 1 Month Rental due to the fact that the landlords' family were scheduled to occupy the property in July 2017.

The tenant confirmed that on April 28, 2017 he sent the landlords a letter indicating his intention to vacate the property for May 31, 2017. He did not dispute that his family had vacated the rental property a month prior to the expiration of the fixed-term tenancy but he questioned the validity of the second fixed-term tenancy signed between the parties. As previously stated, the tenant said that the second fixed-term tenancy was signed under duress and he felt that only the first, fixed-term tenancy which was set to continue on a month-to-month basis should be seen as valid. He said that when the first fixed-term tenancy was set to expire he was given an ultimatum by the landlords which consisted of a threat of eviction if a second, fixed-term tenancy was not signed. As part of the tenant's evidentiary package he produced a letter from the landlords emailed to him on June 7, 2016. This letter noted that the fixed-term tenancy would expire on June 30, 2016. In addition to this letter, a blank copy of a 2 Month Notice to End Tenancy for Landlord's Use of Property was enclosed with the email.

### Analysis

The tenant has alleged that the second-fixed term tenancy should be found to be invalid due to the coercion he faced in signing the agreement. He stated that the landlords presented him with two options, signing the contract or facing eviction.

I find the tenant's assertion that he faced undue pressure from the landlord to sign the second fixed-term tenancy to be an overstatement of issue. At no point did the tenant face eviction from the landlord. The tenant signed a fixed-term tenancy that was set to expire on June 30, 2016. Following this date, the tenancy was set to continue on as a month-to-month tenancy. The landlords emailed a letter and blank 2 Month Notice to End Tenancy to the tenant on June 7, 2016 informing him that his tenancy was set to expire on June 30, 2016. Had the tenant brought these documents to arbitration they would have most likely been found to be unenforceable. Email is not a recognized form of service and a blank 2 Month Notice missing the most basic of information would almost certainly been seen as invalid by the *Residential Tenancy Branch* had it ever been served on the tenant.

The tenant unfortunately assumed that the notice he received was valid and signed a new, fixed-term tenancy. I sympathize with the tenant for signing a contract under the assumption that the letter and notice to end tenancy he received were valid; however, I have no authority to invalidate a voluntary agreement between the two parties. The tenant is responsible to make the relevant inquiries into the law governing the contracts he signs.

In addition, the tenant raised the issue of duress. An older, yet relevant and applicable legal precedent concerning the issue of duress in the formation of contracts is found in *Pao On v. Lau Yin Long*, [1980] A.C. 614.

At 635 J.C.P.C in this decision it is noted:

Duress, whatever form it takes, is a coercion of the will so as to vitiate consent...[I]n a contractual situation commercial pressure is not enough. There must be present some factor...which could in law be regarded as coercion of [the] will [of the person alleging duress] so as to vitiate their consent...In determining whether there was a coercion of will such that there was no true consent, it is material to enquire whether the person alleged to have been coerced did or did not protest; whether, at the time they were allegedly coerced into making the contract, they did or did not have alternative course open to them such as an adequate legal remedy; whether they were independently advised; and whether after entering the contract they took steps to avoid it. All of these matters are relevant in determine whether the person alleging duress acted voluntarily or not.

Based on the testimony and actions of the tenant, I find no evidence of duress. The tenant entered in to the second agreement under his own free will. He had every opportunity to seek independent legal advice on the matter. Little evidence was produced during the hearing that he protested this second fixed-term tenancy

agreement until the landlords pursued him for a monetary award, and notably the tenant continued to pay rent without any protest for 11 months following his agreement to the fixed-term tenancy.

Section 7 of the *Act* explains, “If a tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying tenant must compensate the other for damage or loss that results... A landlord who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.”

This issue is expanded upon in *Residential Tenancy Policy Guideline #5* which explains that, “Where the tenant gives written notice that complies with the Legislation but specifies a time that is earlier than that permitted by the tenancy agreement, the landlord is not required to rent the rental unit or site for the earlier date. The landlord must make reasonable efforts to find a new tenant to move in on the date following the date that the notice takes legal effect.”

In this case, written notice was provided to the landlord on or around May 1, 2017. The landlords testified that upon receipt of this notice they immediately on May 2, 2017 posted an online ad listing the apartment for rent for June 1, 2017. I accept the landlords’ testimony that it would be difficult to find another occupant for this rental unit because it was only available to any potential renter as a short term of one month due to the landlords’ prior planned occupation of the unit by their family in July 2017. I find that the landlords have made *reasonable efforts to find a new tenant to move in on the date following the date that the notice takes legal effect.*

The landlords have also applied to retain the security deposit from the tenants. Section 38 of the *Act* requires the landlord to either return a tenant’s security deposit in full or file a claim against a tenant’s deposit within 15 days of the *later* of the end of the tenancy or the date a tenant’s forwarding address is received in writing. The landlords have demonstrated that this tenancy ended on May 31, 2017 and they applied for dispute resolution on June 9, 2017. A letter dated June 1, 2017, signed by the tenants and written to the landlords demonstrates that the landlords’ were possession of the tenant’s forwarding address on this date. The landlords have therefore fulfilled the requirements of section 38 of the *Act*.

Subsections 4 of this section states that, “A landlord may retain an amount from a security deposit or a pet damage deposit if, after the end of the tenancy, the director orders that the landlord may retain the amount.” I find that the landlords have suffered a

loss as a result of this tenancy and may therefore retain the security deposit pursuant to section 38 and 72 of the *Act* against the monetary award to which they are entitled.

As the landlords were successful in their application they may recover the \$100.00 filing fee from the tenant.

### Conclusion

I issue a Monetary Order of \$812.50 in favour of the landlords as follows:

Item	Amount
Unpaid Rent for June 2017	\$1,375.00
Recovery of Filing Fee	100.00
Less Return of Security Deposit	(-662.50)
<b>Total =</b>	<b>\$812.50</b>

The landlords are provided with a Monetary Order in the above terms and the tenant must be served with this Order as soon as possible. Should the tenant fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial 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: August 2, 2017

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Residential Tenancy Branch