



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNSD MNDC FF

### Introduction

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

- authorization to retain the tenant's security deposit, pursuant to section 38 of the *Act*;
- a monetary order pursuant to section 67 of the *Act*; and
- authorization to recover the filing fee for this application from the tenant, pursuant to section 72 of the *Act*.

Both the landlord and the tenant appeared at the hearing. The parties were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. The landlord was represented at the hearing by his agent, P.W. (the "landlord").

The landlord stated that she sent the tenant a copy of the Application for Dispute Resolution and evidentiary package via Canada Post Registered Mail on March 27, 2017. The tenant acknowledged receipt of the package. Pursuant to sections 88 and 89 of the *Act* the tenant is found to have been served with these documents.

### Issue(s) to be Decided

Is the landlord entitled to retain the tenant's security deposit?

Can the landlord recover a monetary order?

Is the landlord entitled to a return of the filing fee?

### Background and Evidence

Testimony was provided by the landlord that the tenancy between the landlord and the tenant began on October 1, 2016 and ended in February 2017. An examination of the tenancy agreement submitted to the hearing by the landlord as part of her evidentiary

package shows that the tenancy for this property began on September 1, 2015. Rent is \$5,000.00 per month and a security deposit of \$2,500.00 was paid at the outset of the tenancy.

While not named on the tenancy agreement, it was explained to the hearing that the respondent tenant moved into the rental unit in October 2016 when tenant, C.W. moved out. The respondent tenant paid \$815.00 per month to occupy a room in the home, and paid the landlord a security deposit of \$400.00.

The landlord is seeking to retain the tenant's security deposit on the basis that the tenant did not provide the landlord with 1 month's written notice informing the landlord of her intention to vacate the property. The landlord explained that tenant C.W. had forfeited his deposit because 1 month notice was not given to the landlord of his intention to vacate the rental unit. Additionally, the landlord is seeking \$400.00 for a service charge associated with the new tenant moving in, and \$40.00 for a credit check of the new tenant.

During the course of the hearing, the tenant explained that she had never signed a tenancy agreement, and questioned how the landlord had suffered a loss. She explained that she provided the landlord with notice of her intention to vacate the suite on February 15, 2017 via email. A copy of this email was submitted at the hearing as part of the tenant's evidentiary package. The room was occupied on March 12, 2017; however, the tenant paid rent for the entire month of March 2017 and was subsequently refunded the difference by the incoming tenant.

No condition inspection of the rental unit was performed by the parties, nor was any attempt made by the landlord to schedule a condition inspection of the unit.

### Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. In this case, the onus is on the landlord to prove her entitlement to a claim for a monetary award

The landlord explained that she was seeking a Monetary Order of \$845.00 because the tenant did not provide her with 1 month notice of her intention to vacate the rental property, because of services charges the landlord incurred processing the new tenant and because of a credit check that the new tenant was required to complete.

I find that the landlord has failed to provide any justification for the manner at which she arrived at this figure. Section 67 provides that the party claiming the damage or loss must prove the existence of damage or loss. Testimony provided by the tenant demonstrated that the rental unit was occupied on March 12, 2017 but rent for the month of March 2017 was paid in its entirety on February 28, 2017 by the tenant. Furthermore, no receipts or invoices were provided to the hearing showing any payments related to a credit check or for the processing of a new tenant.

The landlord's application for a monetary order is dismissed. The landlord is directed to return the tenant's security deposit.

As the landlord was unsuccessful in her application, she must bear the cost of her own filing fee.

### Conclusion

The landlord's application for a monetary order is dismissed. The landlord is directed to return the tenant's security deposit.

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 31, 2017

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Residential Tenancy Branch