



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNSD, MNR, MNDC, FF

### Introduction

The landlord and the tenant convened this hearing in response to applications.

The landlord's application is seeking orders as follows:

1. For a monetary order for unpaid rent;
2. To keep all or part of the security deposit; and
3. To recover the cost of filing the application.

The tenant's application is seeking orders as follows:

1. For the return of double the security deposit; and
2. To recover the cost of filing the application.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

### Issues to be Decided

Is the landlord entitled to a monetary order for unpaid rent?

Is the landlord entitled to keep all or part of the security deposit?

Is the tenant entitled to double the security deposit?

### Background and Evidence

The parties agreed that they entered into a fixed term tenancy which was to commence on September 15, 2016 and was to expire on September 15 2017. Rent in the amount of \$2,400.00 was payable on the first of each month. The tenant paid a security deposit of \$1,200.00.

### Landlord's application

The landlord's agent testified that the tenant was did not show up on September 15, 2016, to receive the keys. The agent stated that when they finally were able to get a hold of the tenant, the tenant stated that they would not be moving into the premises.

The landlord's agent testified that they were able to find a new renter on September 18, 2016; however, the tenancy agreement was not in effect until October 15, 2016. The landlord seeks to recover loss of rent from September 15 to October 15, 2016.

The tenant testified that they went there on September 15, 2016, and the rental unit was dirty which was not acceptable. The tenant stated the landlord told them to come back in one week. However, when they came back the unit was already re-rented.

### Tenant's application

The tenant testified that they gave the landlord their forwarding address for the return of the security deposit on September 26, 2016, in person.

The landlord's agent acknowledged that the tenant's forwarding address was received on September 26, 2016.

### Analysis

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

In a claim for damage or loss under the Act or tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities. In this case, the each party has the burden of proof to prove their respective claim.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

Section 7(1) of the Act states that if a landlord or tenant does not comply with the Act, regulation or tenancy agreement, the non-comply landlord or tenant must compensate the other for damage or loss that results.

Section 67 of the Act provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

Landlord's application

Section 45 of the Residential Tenancy Act states: (fixed term)

*45 (2) A tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that*

*(a) is not earlier than one month after the date the landlord receives the notice,*

*(b) is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and*

*(c) is the day before the day in the month, or in the other period on which the tenancy is based,*

In this case, the evidence of the landlord's agent was that the tenant breached the fixed term tenancy by failing to move-in to the rental premises. The evidence of the tenant was the rental unit was not acceptable and the landlord told them to return in one week.

In this case the tenant entered into a written tenancy agreement. The tenant provided no evidence to support their version of events, such a photograph. I find the tenant breached the Act, when they failed to pay rent in accordance with the tenancy agreement and when they ended their tenancy earlier than the Act allows and this caused losses to the landlord from September 15, 2016 to October 15, 2016, in the amount of \$2,400.00.

I find the landlord mitigated the loss as they found a new renter on September 18, 2016, which the tenancy commenced on October 15, 2016. Therefore, I find the landlord is entitled to compensation for loss of rent in the amount of **\$2,400.00**.

I find that the landlord has established a total monetary claim of **\$2,500.00** comprised of the above described amount and the \$100.00 fee paid for this application.

Tenant's application

Return of security deposit and pet damage deposit is defined in Part 2 of the Act.

**Return of security deposit and pet damage deposit**

38 (1) Except as provided in subsection (3) or (4) (a), **within 15 days after the later of**

- (a) the date the tenancy ends, and
- (b) the date the landlord receives the tenant's forwarding address in writing,

the landlord **must do one of the following:**

- (c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;
- (d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

...

(6) If a landlord does not comply with subsection (1), the landlord

- (a) may not make a claim against the security deposit or any pet damage deposit, and
- (b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

In this case, the landlord's agent confirmed that the landlord had the tenant's forwarding address on September 26, 2016. The landlord did not make an application claiming against the security deposit within 15 day or return the security deposit.

I find the landlord has breached 38(1) of the Act.

The security deposit is held in trust for the tenant by the landlord. At no time does the landlord have the ability to simply keep the security deposit because they feel they are entitled to it or are justified to keep it.

The landlord may only keep all or a portion of the security deposit through the authority of the Act, such as an order from an Arbitrator. Here the landlord did not have any authority under the Act to keep any portion of the Security deposit. Therefore, I find that the landlord was not entitled to retain any portion of the security deposit..

Section 38(6) provides that if a landlord does not comply with section 38(1), the landlord must pay the tenant double the amount of the security deposit. The legislation does not provide any flexibility on this issue.

Therefore, I must order, pursuant to section 38 of the Act, that the landlord pay the tenant the sum of **\$2,500.00**, comprised of double the security deposit (**\$1,200.00**) and to recover the \$100.00 fee for filing.

### Conclusion

The landlord's is granted a monetary order for unpaid rent in the amount of \$2,500.00. The tenant is granted a monetary order for double the security deposit in the amount of \$2,500.00.

I find it appropriate to offset their respective monetary awards in full satisfaction of their respective claims.

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: October 10, 2017

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Residential Tenancy Branch