



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      FF MNR MNSD

### 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 testimony, to make submissions, and to call witnesses. The tenant was represented at the hearing by her advocate, P.A. (the "tenant").

The landlord stated that she sent the tenant a copy of the Application for Dispute Resolution and an evidentiary package via Canada Post Registered Mail on June 19, 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 award?

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

### Background and Evidence

Undisputed testimony provided to the hearing by the landlord explained that this tenancy began in June 2016 and ended on May 28, 2017. Rent was \$1,100.00 per month and a security deposit of \$550.00 continues to be held by the landlord.

The landlord said she was seeking a monetary award of \$1,100.00 representing rent that was lost following the late notice the tenant provided the landlord regarding her intention to vacate the suite. At the hearing both parties agreed that the tenant provided notice to the landlord of her intention to vacate the rental unit on approximately May 21, 2017. Copies of text messages contained in the evidentiary package show that the landlord was informed of the tenant's intentions to vacate the suite on May 20, 2017. On May 28, 2017 the parties met and performed an end of tenancy condition inspection report. At this inspection the tenant agreed in writing to surrender \$50.00 from her security deposit. She also provided the landlord with her forwarding address at this time.

During the hearing the landlord argued that she had suffered a loss as a result of the tenant informing her at the end of May 2017, that she would be vacating the suite within the same month. The landlord said she was unable to re-rent the suite until July 2017. It was explained to the hearing by the landlord that following the tenant's notice of her intention to vacate, given to the landlord on approximately May 21, 2017, that the landlord took steps to re-rent the suite. The landlord said various items were cleaned, that the suite was repainted and that the unit was posted on Craigslist for June 3, 2017. The landlord explained that in addition to posting an advertisement for the rental unit online that she informed members of her church and her friends about the availability of the rental unit. The landlord informed that after posting an advertisement online that she received inquiries from numerous potential renters, and formalized a new tenancy on June 20, 2017.

The tenant did not dispute the facts presented above, but questioned the financial loss that the landlord suffered. The tenant argued that the landlord had taken no steps to advertise the rental unit until June 3, 2017, and that she should therefore not be liable for loss of rent for June 2017. Additionally, the tenant said she was under the impression that the rental unit was not going to be re-rented at all, and that it was to be occupied by the landlord herself.

### Analysis

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, I find that no written notice was provided to the landlord. The tenant sent the landlord a text message on, or around May 21, 2017. Sending a text message does not qualify as formal written notice under the *Act*. Furthermore, an examination of the text message conversation between the parties from May 20, 2017 revealed that the tenant did not explicitly say that the unit would be vacant as of June 1, 2017 until she was pressed by the landlord.

The landlord testified that upon receipt of this notice she took immediate steps to inform her neighbours and members of her church that the suite was available for rent. Furthermore, on June 3, 2017, the landlord posted an online advertisement listing the apartment for rent. I accept the landlord's testimony that she could not have posted the rental unit earlier because of the work that was required to bring the rental unit up to a marketable standard. The landlord may have waited until June 3, 2017 to re-advertise the suite but her testimony indicated that the suite was attractive to potential renters and she would most likely have been able to find an occupant for June 1, 2017 had she received proper notice from the tenant of her intention to vacate the suite. I find that the landlord has made *reasonable efforts to find a new tenant to move in on the date following the date that the notice takes legal effect*.

The landlord has also applied to retain the security deposit from the tenant. 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 landlord demonstrated that this tenancy ended on May 28, 2017 and she applied for dispute resolution on June 9, 2017. The parties completed the condition inspection together on May 28, 2017, and the landlord was in possession of the tenant's forwarding address on this date. The landlord has 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 landlord has 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 she is entitled. As the tenant had previously agreed to a \$50.00 deduction from her security deposit, the landlord may retain the remaining amount of the security deposit currently held in trust.

As the landlord was successful in her application they may recover the \$100.00 filing fee from the tenant.

#### Conclusion

I issue a Monetary Order in the landlord’s favour in the amount of \$700.00 against the tenant.

<b>Item</b>	<b><u>Amount</u></b>
Unpaid rent for June 2017	\$1,100.00
Return of Filing Fee	100.00
Less Security Deposit	(-500.00)
<b>Total =</b>	<b>\$700.00</b>

The landlord is 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.

The landlord may retain the tenant’s security deposit as partial relief for the monetary award.

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: November 16, 2017

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Residential Tenancy Branch