



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNDC MNSD FF

### Introduction

This hearing dealt with the landlord's 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 landlord and tenants appeared at hearing. Both parties were given a full opportunity to be heard, to present testimony and to make submissions.

The landlord explained that a copy of the landlord's application for dispute resolution and evidentiary package were sent to the tenants by way of Canada Post Registered Mail on June 29, 2017. The landlord provided the Canada Post Tracking Number to the hearing. Pursuant to sections 88 & 89 the *Act*, the tenants are found to have been duly served with the landlord's application and evidentiary package.

At the outset of the hearing, the landlord asked to amend her application to reflect a monetary award of \$900.00. She stated that her losses were smaller than anticipated and that she wished to amend her application to reflect this. Pursuant to section 64(3)(c) of the *Act*, the landlord's application is amended to reflect this request.

### Issue(s) to be Decided

Is the landlord entitled to a monetary award?

Can the landlord retain the tenants' security deposit?

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

### Background and Evidence

The landlord explained that she was seeking a monetary award of \$900.00 because of loss that she argued was suffered as a result of the tenants' actions.

During the hearing, the parties agreed that a deposit of \$900.00 was paid to the landlord on June 5, 2017, and that the tenants informed the landlord on June 23, 2017 that they had found a different property, and they were intending on occupying this other property. The landlord confirmed receipt of the tenants' forwarding address on June 25, 2017.

The landlord stated that she suffered a loss because of the late notice provided by the tenants of their intention to occupy a different property. She said she was unable to rent the property in question until July 15, 2017. The landlord continued by explaining that it was her understanding that the parties had an understanding whereby the tenants would occupy the rental property for July 1, 2017.

The tenants argued that no tenancy agreement was ever signed between the parties and that it had always been their intention to occupy the property starting August 1, 2017. Tenant T.D., said that she was not even living in the province during the time period in question, and had always intended to occupy the unit for August 1, 2017.

### Analysis

Section 1 of the *Act* defines a tenancy agreement as follows, "means an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a rental unit, use of common areas and services and facilities, and includes a licence to occupy a rental unit."

I find that an oral tenancy agreement was formed between the parties when the tenants paid the landlord a security deposit on June 5, 2017 for the property in question. The question before me is therefore, whether or not the tenants failed to provide the landlord of adequate notice of their intention to cancel the tenancy agreement between the parties.

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 monetary award.

The parties disagreed on the start date of the tenancy. The tenants argued that it was their intention to occupy the rental unit on August 1, 2017 and tenant T.D. said she was not actually even in the province until August 2017. The landlord argued that it was her understanding that this tenancy was to begin on July 1, 2017. The landlord said that she had an email from the tenants indicating their desire to occupy the rental unit for July 1, 2017 but that she had failed to attach it with her evidentiary package.

Section 67 of the *Act* notes, the onus is on the landlord to prove her entitlement to a monetary award. I find that the landlord has failed to produce sufficient evidence that the parties had an agreement on the start date of this tenancy. Both parties agree that no tenancy agreement was signed between the parties, and little evidence was produced at the hearing by the landlord indicating that the parties had agreed to a July 1, 2017 start date for the 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 June 23, 2017. The landlord gave testimony which was disputed by the tenants that upon receipt of this notice she placed the rental unit back into the rental "pool" with her property management firm. As Policy Guideline #5 states, there is a requirement for the presence of a tenancy agreement being broken. I find that while an oral tenancy agreement was entered into, insufficient evidence was presented regarding the details of the tenancy agreement, such as a start date, of length of time,

thereby making it difficult to determine how the agreement was broken by the tenants' actions.

For these reasons, the landlord's application for a monetary award, and to retain the tenants' security deposit is dismissed.

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

The landlord is directed to return the security deposit to the tenants.

### Conclusion

The landlord's application for a monetary award and for a return of the filing fee is dismissed.

The landlord's application to retain the tenants' security deposit is dismissed. The landlord is directed to return the tenants' 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: December 13, 2017

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Residential Tenancy Branch