



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Decision Codes: FF, MNR, MND, MNSD & MNDC

### Introduction

The Application for Dispute Resolution filed by the landlord makes the following claims:

- a. A monetary order in the sum of \$2625 for unpaid rent and damages
- b. An order to keep the security deposit.
- c. An order to recover the cost of the filing fee

The Application for Dispute Resolution filed by the Tenant makes the following claims:

- a. A monetary order in the sum of \$1450
- b. An order to suspend or set conditions on the landlord's right to enter the rental unit.
- c. An order to allow the tenant to reduce rent for repairs, services or facilities agreed upon but not provided.
- d. An order to recover the cost of the filing fee.

A hearing was conducted by conference call in the presence of both parties. The hearing was initially set for September 7, 2017 but it was adjourned to December 5, 2017. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present. The parties acknowledged they had received the documents of the other party.

I find that the Application for Dispute Resolution/Notice of Hearing was filed by the landlord on May 15, 2017 and was served on the tenant by mailing, by registered mail to where the tenant resides. I find that the Application for Dispute Resolution filed by the Tenant was served by registered mail to where the landlord resides. With respect to each of the applicant's claims I find as follows:

### Issues to be Decided

The issues to be decided are as follows:

- a. Whether the landlord is entitled to a monetary order and if so how much?
- b. Whether the landlord is entitled to retain all or a portion of the security deposit/pet deposit?
- c. Whether the landlord is entitled to recover the cost of the filing fee?
- d. Whether the tenant is entitled to a monetary order and if so how much?
- e. Whether the tenant is entitled to an order to allow the tenant to reduce rent for repairs, services or facilities agreed upon but not provided.

- f. Whether the tenant is entitled to recover the cost of the filing fee.

Background and Evidence:

The parties entered into a one year fixed term tenancy agreement that provided that the tenancy would start on April 1, 2016 and end on April 1, 2017. The tenancy agreement provided that the tenant(s) would pay rent of \$1050 per month payable in advance on the first day of each month. The tenant paid a security deposit of \$525 at the start of the tenancy.

At the end of March 2017 the landlord obtained an Order of Possession effective 2 days after service. The tenant was served on April 5, 2017.

The tenant vacated the rental unit at the end of April or early May. The evidence given by the tenant in the form of digital photos indicates she finally vacated on April 30, 2017. The landlord testified it was not until May 2, 2017 that the tenant finally vacated.

It is no longer necessary to consider the tenant's application for an order to set conditions on the landlord's right to enter as the tenancy has come to an end.

Landlord's Application - Analysis

With respect to each of the landlord's claims I find as follows:

- a. I determined the tenant failed to pay the over-holding rent for the month of April and the landlord is entitled to \$1000 for use and occupation rent for that month. I reduced the rent by \$50 because there was a problem with the laundry facilities. The tenant gave the landlord documentation that would permit an e-mail transfer of the rent funds. In exchange the landlord provided her a rent receipt "for use and occupation only." However, I determined the tenant failed to give the landlord the proper code which would permit the transfer of the funds to be completed. I do not accept the testimony of the landlord that she paid the rent in cash. This is inconsistent with the other evidence and the use of the e-mail transfer as a means of paying the rent.
- b. I dismissed the landlord's claim for the loss of rent for May for the following reasons:
  - The landlord testified he was not able to show the rental unit and thus was not able to rent it for May. The landlord failed to prove that he gave the tenant written notice in accordance with the Residential Tenancy Act or that he sufficiently advertised the rental unit.
  - I do not accept the submission of the landlord that the failure of the tenant to properly clean the rental unit prevented the landlord from renting the rental unit. The landlord testified it took 5 hours to clean. He also paid a painter \$350 to paint the rental unit. This is no sufficient damage to give rise to a claim of the landlord for loss of rent for the subsequent month.
  - The landlord testified he had someone lined up and he allowed them to move in early. The landlord failed to prove he sufficiently mitigated the loss.
- c. I determined the landlord is entitled to \$125 for the cost of cleaning. I am satisfied the Tenant failed to sufficiently clean the rental unit when she vacated.
- d. The landlord provided evidence that he paid painter \$350 to re-paint the rental unit. I determined the tenant caused damage that exceeded reasonable wear and tear. However, The Policy

Guideline provides that one can expect an interior paint job to last 4 years. After considering depreciation I determine the landlord is entitled to \$250 of this claim.

In summary I determined the landlord has established a monetary claim against the tenant(s) in the sum of \$1375 plus the \$100 filing fee for a total of \$1475.

#### Security Deposit

The Residential Tenancy Act provides that a landlord must return the security deposit plus interest to the tenants within 15 days of the later of the date the tenancy ends or the date the landlord receives the tenants forwarding address in writing unless the parties have agreed in writing that the landlord can retain the security deposit, the landlord already has a monetary order against the tenants or the landlord files an Application for Dispute Resolution within that 15 day period. It further provides that if the landlord fails to do this the tenant is entitled to an order for double the security deposit.

There is a dispute as to the date on which the tenancy came to an end. However, the digital photos provided by the Tenant indicate the tenant took some photos on April 30, 2017. The landlord filed his Application for Dispute Resolution on May 15, 2017. I determined the landlord failed his claim within the 15 day period required by the Act and the tenant is not entitled to an order for the doubling of the security deposit.

The security deposit totals the sum of \$525. The landlord has established a claim against the tenant in sum of \$1475. I ordered that the landlord shall retain the security deposit in the sum of \$525 thus reducing the amount owing to \$950

#### Tenant's Application:

- a. For the reasons set out above I determined the Tenant is not entitled to an order for the doubling of the security deposit. Further I determine the landlord was entitled to apply the security deposit to his claim. As a result I dismissed the tenant's application for the return of the security deposit.
- b. The tenant sought compensation in the sum of \$100 per month for 4 months because of the failure of the landlord to ensure there was a secure lock and the lack of an operational washing machine. The landlord disputes this claim. He testified he fixed the lock on 3 occasions and then the tenant denied him access. Further, he allowed the tenant to use his washing machine upstairs until the end of February. After carefully considering all of the evidence I determine the tenant is entitled to \$150 for the lack of a working washing machine and \$50 for problems with the lock for a total of \$200.

In summary I determined the tenant has established a claim against the landlord in the sum of \$200 plus \$100 for the cost of the filing fee for a total of \$300.

#### Conclusion

I ordered that the landlord shall retain the security deposit of \$525. In addition the landlord has established a claim against the tenant in the sum of \$950. The tenant has established a claim against the landlord in the sum of \$300. After setting off one claim against that of the other I ordered that the tenant shall pay to the landlord the sum of \$650.

It is further Ordered that this sum be paid forthwith. The applicant is given a formal Order in the above terms and the respondent must be served with a copy of this Order as soon as possible.

Should the respondent fail to comply with this Order, the Order may be filed in the Small Claims division of the Provincial Court and enforced as an Order of that Court.

**This decision is final and binding on the parties.**

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 06, 2017

---

Residential Tenancy Branch