



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNSD RPP FF

### Introduction

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

- authorization to obtain a return of all or a portion of the security deposit pursuant to section 38;
- an order requiring the landlord to return the tenant's personal property pursuant to section 65;
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

The hearing was conducted by conference call. The landlord did not attend this hearing, although I waited until 11:25 a.m. in order to enable the landlord to connect with this teleconference hearing scheduled for 11:00 a.m. The tenant attended the hearing and was given a full opportunity to provide affirmed testimony, to present evidence and to make submissions.

The tenant testified that on September 23, 2017, he sent a copy of the Application for Dispute Resolution and Notice of Hearing to the landlord by registered mail. A registered mail tracking number was provided in support of service.

Based on the above evidence, I am satisfied that the landlord was served with the Application for Dispute Resolution and Notice of Dispute Resolution Hearing pursuant to sections 89 & 90 of the Act. The hearing proceeded in the absence of the landlord.

### Issues

Is the tenant entitled to a return of all or a portion of the security deposit?

Should the landlord be ordered to return the tenant's personal property?

Is the tenant entitled to recover the filing fee for this application from the landlord?

### Background and Evidence

The rental unit is a small one bedroom cabin on a farm property. The tenancy was to begin on August 1, 2017 although the tenant did not move-into the rental unit until August 3, 2017. On August 2, 2017 the tenant paid \$550.00 in rent for this month. The tenant testified that there was no discussion of a security deposit and one was not paid.

The tenant clarified he is seeking reimbursement of the August 2017 rent and not a return of a security deposit. The tenant testified that he had previously done work on this property for the landlord and he liked the cabin so had an intention of renting it. He did some work on the cabin to get it ready to be rented. He paid the landlord \$550.00 for rent on August 2, 2017. He moved in on August 3, 2017 but testified that the cabin was still in disarray. He later discovered black mould under the cupboards. He testified that the mould was making him sick so he could no longer stay there. He moved out on August 13, 2017 and returned the keys to the landlord. He was also locked out of his storage unit by the landlord but after paying the landlord an additional \$100.00 towards storage rent, the landlord permitted him to remove his belongings from storage.

### Analysis

Pursuant to section 45 of the Act, a tenant may only end a periodic tenancy by giving the landlord written notice to end the tenancy of at least 1 month unless the landlord has breached a material term of the tenancy agreement.

Residential Tenancy Policy Guideline #8, Unconscionable and Material Terms, provides the following guidance:

In order to end a tenancy for a breach of a material term, the party alleging the breach must inform the other party in writing of the following:

- that there is a problem;
- that they believe the problem is a breach of a material term of the tenancy agreement;
- that the problem must be fixed by a deadline included in the letter, and that the deadline be reasonable; and
- that if the problem is not fixed by the deadline, the party will end the tenancy.

I find the tenant failed to inform the landlord that there is a problem and that he believed it to be a material breach of the tenancy agreement; failed to provide the landlord with a reasonable opportunity to correct the alleged breach; and failed to notify the landlord that he would end the tenancy if the problem was not fixed by the stated deadline.

Further, the tenant's own testimony was that he was on the property and working on the rental unit prior to paying the landlord rent money to begin the tenancy. As such, I find the tenant ought to have known the condition of the rental unit prior to beginning the tenancy.

I find the tenant is not entitled to be reimbursed the rent paid for the month of August 2017 as the tenant resided in the rental unit until August 13, 2017 and did not provide the landlord any written notice to end the tenancy or an opportunity to correct any alleged breach.

The tenant acknowledged he has since retrieved all his personal property so I make no order on this issue.

As the tenant was not successful in this application, I find that the tenant is not entitled to recover the \$100.00 filing fee paid for this application.

### Conclusion

The tenant's application is dismissed without leave to reapply.

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

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Residential Tenancy Branch