



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes                      MNDC, MNSD, FF

### Introduction

This hearing dealt with a landlord's application for a Monetary Order or damages or loss under the Act, regulations or tenancy agreement; and, authorization to retain the security deposit. The tenant did not appear at the hearing. The landlord testified that the hearing documents, including evidence, was sent to the tenant via registered mail on September 8, 2017 and the registered mail was successfully delivered. The landlord provided a copy of the registered mail receipt, including tracking number, as proof of service. The service address used was the forwarding address the tenant provided to the landlord in a registered letter. I was satisfied that the landlords duly served the tenant with notification of this proceeding and I continued to hear from the landlord without the tenant present.

### Issue(s) to be Decided

1. Are the landlords entitled to compensation for damages or loss under the Act, regulations or tenancy agreement as claimed?
2. Are the landlords authorized to retain the security deposit?

### Background and Evidence

The landlords and the tenant executed a tenancy agreement on July 28, 2017 for a tenancy set to commence on August 15, 2017. The tenant paid a security deposit of \$500.00. The tenancy agreement provides that the tenant was required to pay rent of \$1,000.00 on the first day of every month. The length of the tenancy is not specified in the space provided; however, there is no indication it was a fixed term tenancy.

On August 15, 2017 the tenant e-transferred \$500.00 to the landlords for pro-rated rent for August 2017 and the tenant was given possession of the rental unit. Later on August 15, 2017 the tenant emailed the landlord to inform the landlord she did not like the driveway and she wanted to back out of the tenancy agreement. The landlord responded by offering to return \$500.00 to the tenant and according to the landlord the tenant appeared to agree to accept this offer. The landlord e-transferred \$500.00 to the tenant on August 16, 2017. However, on August 29, 2017 the landlord received a registered letter containing the tenant's forwarding address and a request for return of the tenant's security deposit.

By way of this application the landlords seek authorization to retain the \$500.00 the landlords retained in satisfaction of the rent for the period of August 15 – 31, 2017.

The landlord did not obtain the tenant's written consent to retain the security deposit and based on the landlord's submissions it was unclear as to whether the \$500.00 already returned to the tenant was return of rent or the security deposit. During the hearing the landlord testified that she had returned the security deposit; however, in the landlord's written submissions the landlord had submitted that she returned the tenant's rent payment and the landlord keep the security deposit.

In addition to retaining the \$500.00 already in her possession, the landlords seek to recover the \$500.00 that was refunded to the tenant. The landlord explained the basis for seeking return of this money is because the landlords decided to wait to start the tenancy until August 15, 2017 for the benefit of the tenant and because they thought this tenant would be a good tenant but they suffered a vacancy for the first half of August 2017 in doing so. Also, the landlord thought the parties had a deal with respect to the landlord keeping \$500.00 and the tenant was "nasty" in trying to renege on the deal by sending the registered letter requesting return of the security deposit. Also, the landlord claims to have suffered great stress and anxiety over this matter.

The landlord confirmed that if the landlords are permitted to retain the \$500.00 they collected from the tenant and did not refund that the landlords will not have suffered any loss of rent after August 15, 2017.

As evidence for this proceeding, the landlords provided copies of the tenancy agreement; text messages exchanged between the parties; and emails exchanged with each other, including evidence of e-transfer payments; and, the tenant's letter requesting return of her security deposit.

### Analysis

Section 16 of the Act provides that parties become bound to fulfill the terms of their tenancy agreement once the tenancy agreement forms, even if the tenant never occupies the rental unit. Section 16 provides as follows:

#### **Start of rights and obligations under tenancy agreement**

**16** The rights and obligations of a landlord and tenant under a tenancy agreement take effect from the date the tenancy agreement is entered into, whether or not the tenant ever occupies the rental unit.

Having been satisfied the parties entered into a tenancy agreement on July 28, 2017 for a tenancy set to commence on August 15, 2017, pursuant to section 16 of the Act, I find the tenant was bound to pay pro-rated rent of \$500.00 on August 15, 2017. The tenant paid this amount to the landlord and I find the landlords were entitled to receive it.

Since this was not a fixed term tenancy, I find this was a periodic (ie: month to month) tenancy. Where a tenant seeks to end a periodic tenancy the tenant is required to give at least one full month of written notice to the landlord pursuant to section 45 of the Act. The tenant did not do so and the tenant may have been held responsible to pay rent through the month of September 2017. Fortunately for the tenant, the landlord confirmed that the landlord did not suffer a loss of rent for September 2017. However, the landlords did not receive any other rent for August 2017 and I see no basis under the Act that would require the landlords to refund the rent payment of \$500.00 to the tenant.

As for the \$500.00 the landlords did return to the tenant on August 16, 2017, it was unclear that the payment represented return of rent or the security deposit, especially since the amounts were the same. According to the landlords' written submission and the tenant's registered letter letter, it would appear the landlords may have retained the tenant's security deposit.

The landlord claims that the parties had an agreement that the landlords may retain the security deposit, or \$500.00, in satisfaction of rent for August 2017. Where a landlord reaches an agreement with the tenant to retain the tenant's security deposit, the landlord must obtain the tenant's agreement or consent in writing. It would appear the landlord did not go so far as to get the tenant's written agreement or consent and I find that failure to do so is what led to the filing of this Application for Dispute Resolution.

A landlord may seek authorization from the Director, as delegated to an Arbitrator, to retain a tenant's security deposit, which the landlords did by filing this Application for Dispute Resolution. I am also satisfied that the landlords did make this Application for Dispute Resolution within 15 days of receiving the tenant's forwarding address in writing as required under section 38 of the Act.

Having been satisfied the landlords were entitled to rent of \$500.00 from the tenant for the period of August 15 – 31, 2017 and the landlords are holding only \$500.00 of the tenant's money, which may be the security deposit, by way of this decision I authorize the landlords to retain the tenant's security deposit.

I make no further award to the landlords. As explained to the landlord during the hearing, the landlords are not entitled to rent or other damages or loss from the tenant for the period prior to August 15, 2017. The landlords' made a business decision to wait until August 15, 2017 for this particular tenant. They were not bound to do so and were at liberty to pursue other applications for tenancy, if any. Further, a person's "nastiness" is not a basis for compensation under the

Act. I am also of the view that if the parties had reached an agreement that the landlords may retain the security deposit, as alleged, the landlords may have avoided the dispute and having to file an Application for Dispute Resolution by obtaining the tenant's written agreement or consent.

Conclusion

The landlords are authorized to retain the tenant's security deposit, or \$500.00 that the landlords collected from the tenant in satisfaction of rent or loss of rent for the period of August 15 - 31, 2017. The landlords' request for other compensation is dismissed.

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: March 29, 2018

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Residential Tenancy Branch