



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding CAPREIT LTD. PARTNERSHIP  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNRL-S, FFL

### Introduction

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

- a Monetary Order for unpaid rent, and authorization to retain the tenant's security deposit in satisfaction of this claim pursuant to section 67 of the *Act*; and
- recovery of the filing fee for this application from the tenant pursuant to section 72 of the *Act*.

The tenant did not attend this hearing, although I left the teleconference hearing connection open until 2:20 p.m. in order to enable the tenant to call into this teleconference hearing scheduled for 1:30 p.m. The landlord's agent R.A. attended the hearing and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Dispute Resolution Proceeding. I also confirmed from the teleconference system that the landlord's agent and I were the only ones who had called into this teleconference.

The landlord's agent testified that the landlord's Notice of Dispute Resolution Proceeding package including evidentiary material was sent to the tenant by Canada Post registered mail on December 19, 2017. This testimony was supported by a Canada Post registered mail receipt with tracking number submitted as documentary evidence by the landlord. In accordance with sections 89 and 90 of the *Act*, I find that the tenant was deemed served with the landlord's application and evidence on December 24, 2017, five days after its mailing.

Issue(s) to be Decided

Is the landlord entitled to a monetary award for unpaid rent? If so, is the landlord entitled to retain the tenant's security deposit in satisfaction of this claim?

Is the landlord entitled to recover the cost of the filing fee from the tenant?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of this matter and my findings are set out below.

The landlord's agent testified that the tenant never signed a tenancy agreement or took possession of the rental unit. The tenant signed a tenancy application on November 15, 2017 and was scheduled to take possession of the rental unit on November 20, 2017. The monthly rent for the unit was to be \$1,175.00. The tenant provided the landlord with a certified cheque in the amount of \$1,012.43 on November 16 or 17, 2017 – the landlord's agent was unsure of the exact date. He stated that the cheque was to cover payment of the security deposit of \$587.50 and rent from November 20 to 30, 2017.

The landlord's agent stated that on November 20, 2017, the tenant called to advise that she had to work late and was unable to move in that day as scheduled. The next day, the tenant contacted the landlord to advise that she would not be moving into the rental unit.

The landlord was able to rent the apartment for December 1, 2017. The landlord is applying to retain a portion of the tenant's security deposit to satisfy the amount of rent owed by the tenant for the period of November 20 to 30, 2017. I questioned why there would be any rent amount owing, given that the tenant purportedly provided a cheque for payment of the security deposit and rent, in the amount of \$1,012.43. The landlord's agent testified that the landlord had miscalculated the amount of rent due for the period of November 20 to 30, 2017. The landlord's agent claims that in fact the amount of rent for that period should have been based on 11 days instead of 10 days, which would have totalled \$430.83 instead of \$391.66.

The tenant provided the landlord with her forwarding address on November 30, 2017. Of the \$1,012.43 paid by the tenant, the landlord's agent stated that they have retained \$424.93 towards payment of rent for November 20 to 30, 2017. The tenant has been

returned \$581.60 as a partial refund of the security deposit paid by the tenant. The landlord is seeking to retain a further \$5.90 as a deduction from the security deposit to make up for the shortfall in rent collected as a result of the landlord's error.

### Analysis

Section 38 of the *Act* requires the landlord to either return the tenant's security deposit in full or file for dispute resolution for authorization to retain the deposit 15 days after the later of the end of a tenancy or upon receipt of the tenant's forwarding address in writing. If that does not occur, the landlord must pay a monetary award, pursuant to section 38(6)(b) of the *Act*, equivalent to double the value of the security deposit. However, this provision does not apply if the landlord has obtained the tenant's written permission to keep all or a portion of the security deposit as per section 38(4)(a).

In the present case, the tenant did not provide any written authorization for the landlord to retain any portion of the security deposit. The tenant provided her forwarding address in writing to the landlord on November 30, 2017 and the landlord filed for dispute resolution on December 12, 2017, which is within the 15-day time frame allowed under section 38 of the *Act*. Therefore, I find that the landlord was not authorized by the tenant to retain any portion of the security deposit, but did apply to do so in accordance with section 38 of the *Act*.

Section 67 of the *Act* allows me to issue a monetary award for loss resulting from a party violating the *Act*, regulations or a tenancy agreement. 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 *Act* by 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. The claimant also has a duty to take reasonable steps to mitigate their loss.

Section 26 of the *Act* requires that "A tenant must pay rent when it is due under the tenancy agreement...". In this case, the tenant never signed a tenancy agreement. The tenant only signed a tenancy application, which was submitted into documentary evidence by the landlord. The tenancy application does not include any details regarding even the most basic of information regarding what the tenancy agreement would entail, such as monthly rent or amount of security deposit, in the sections of the form allocated for such information. As such, I do not find that the landlord has provided

sufficient evidence to prove that they adequately communicated to the tenant the amount required for security deposit and the amount required for rent.

Further to this, the tenant complied with providing a certified cheque in payment of the security deposit and rent as directed by the landlord. The landlord's agent testified that the loss from unpaid rent was a result of a calculation error made by the landlord.

I find that there is insufficient evidence to prove that the tenant had been adequately informed in advance of November 20, 2017 that the landlord had erred in calculating the amount owing for rent. She cannot be held responsible for not paying the full amount of rent if she was never informed of the correct amount to pay by the landlord.

Therefore, I find on a balance of probabilities that the tenant did not violate the *Act*, regulation or tenancy agreement which requires tenants to pay rent when due according to their tenancy agreement. As a result, I find that the landlord did not suffer a loss stemming from the other party's contravention of the *Act*, but rather from their own error. I find that the landlord's application does not meet the grounds for which a monetary award can be granted pursuant to section 67 of the *Act*. As such, the landlord is not entitled to retain the remainder of the tenant's security deposit and must return it to the tenant.

I dismiss the landlord's application to retain the remainder of the tenant's security deposit and to recover the filing fee, without leave to reapply.

I order that the landlord to return to the tenant the \$5.90 of the security deposit retained by the landlord.

### Conclusion

I dismiss the landlord's application without leave to reapply, in its entirety.

Pursuant to sections 67 and 72 of the *Act*, I grant the tenant a Monetary Order in the amount of \$5.90. The tenant is provided with this Order in the above terms and the landlord must be served with this Order as soon as possible. Should the landlord 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.

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: June 12, 2018

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Residential Tenancy Branch