



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes:** Landlord - *MNSD, MNDC, FF*. Tenant - *MNSD, FF*

### **Introduction**

This hearing dealt with applications by the landlord and the tenant, pursuant to the *Residential Tenancy Act*. The landlord applied for a monetary order for loss of income, the filing fee and to keep the security deposit in satisfaction of her claim. The tenant applied for a monetary order for the return of the security deposit and for the filing fee.

Both parties attended the hearing and were given full opportunity to present evidence and make submissions. The parties acknowledged receipt of evidence submitted by the other and gave affirmed testimony.

### **Issues to be decided**

Is the landlord entitled to keep the security deposit in partial satisfaction of her claim for loss of income and the filing fee? Is the tenant entitled to the deposit and the filing fee?

### **Background and Evidence**

Both parties agreed to the following: On October 15, 2017, the tenant paid a security deposit in the amount of \$515.00 to the landlord, to hold the rental unit so that she could move in on November 01, 2017. The landlord provided the tenant with a receipt for the security deposit. The agreement was not documented. On October 16, 2017, the tenant decided not to rent this unit and informed the landlord of her decision. On October 25, 2017, the tenant provided the landlord with a forwarding address and requested the return of the security deposit.

The landlord testified that she made immediate efforts to find a tenant for November 2017. The landlord stated that an advertisement for the rental unit was ongoing on a popular free website and that on October 25, 2017; she advertised the vacancy in the local newspaper at a cost of \$15.73. The landlord filed a copy of the advertisement and the invoice and is claiming the cost of this advertisement.

The landlord testified that a new tenant was found for November 26, 2017 and the landlord received \$171.00 from the new tenant as rent for the last five days of November 2017. The landlord is claiming a loss of income in the amount of \$854.00 for the time that the rental unit was vacant.

The landlord has also applied for the recovery of the filing fee of \$100.00 and to retain the security deposit in partial satisfaction of her monetary claim.

### **Analysis**

#### **Landlord's application:**

Section 16 of the *Residential Tenancy Act* states that 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.

The parties entered into a verbal tenancy agreement on October 15, 2017 at which time the tenant paid the security deposit. Even though there was no document signed by both parties regarding the terms of the agreement, the rights and obligations of both parties took effect that date, even though the tenant never moved in. Once the security deposit is paid, the tenancy is considered started. Accordingly, the tenant is obliged to give the landlord one month's notice to end the tenancy and the landlord is entitled to rental income for that month.

In this case, the tenant entered into a tenancy agreement, but failed to give the landlord adequate notice to end the tenancy. The landlord made efforts to mitigate her losses by showing the suite and was able to find a tenant for November 26, 2017. This resulted in a loss of income to the landlord for the period of November 01 to November 26 in the amount of \$854.00.

*Residential Tenancy Policy Guideline #3* states that the damages awarded are an amount sufficient to put the landlord in the same position as if the tenant had not breached the agreement. As a general rule, this includes compensating the landlord for any loss of rent up to the earliest time that the tenant could legally have ended the tenancy. Therefore, I find that the landlord is entitled to the income that she lost for part of the month of November 2017, in the amount of \$854.00.

I further find that the landlord is entitled to the cost of advertising in the amount of \$15.73. Since the landlord has proven her case she is entitled to the recovery of the filing fee of \$100.00. The landlord has established a total claim of \$969.73.

Tenants' application:

As stated above, the rights and obligations of both parties started on October 15, 2017 when the tenant paid the security deposit of \$515.00. Also as stated above, by giving the landlord notice on October 16, 2017 to end the tenancy immediately, the tenant failed to provide the landlord with adequate notice to end the tenancy.

As a result of this breach on the part of the tenant, the landlord suffered a loss of income for a portion of November and is entitled to recover this loss from the tenant. The tenant has not proven her claim and therefore must bear the cost of filing her own application.

The landlord has established a claim of \$969.73 and currently holds a security deposit of \$515.00. I order that the landlord retain the security deposit in partial satisfaction of the claim and I grant the landlord a monetary order under section 67 of the *Residential Tenancy Act*, for the balance of \$454.73. This order may be filed in the Small Claims Court and enforced as an order of that Court.

**Conclusion**

The landlord may retain the security deposit of \$515.00. I grant the landlord a monetary order in the amount of **\$454.73**.

The tenant's application is dismissed in its entirety.

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 06, 2018

---

Residential Tenancy Branch