



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes:** MNSD, MNR, FF

### **Introduction**

This hearing dealt with an application by the landlord for a monetary order for loss of income and for the recovery of the filing fee. The landlord also applied to retain the security deposit in partial satisfaction of her claim. Both parties attended this hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. Both parties represented themselves.

As both parties were in attendance I confirmed service of documents. The landlord confirmed receipt of the tenant's evidence package on the day before this hearing and stated that she had not served her evidence on the tenant because she was given to understand that she was required to serve her evidence only to the Residential Tenancy Branch. The tenant agreed that he had served his evidence on the landlord on the day prior to this hearing. Since the landlord had not served the tenant with her evidence package and since the tenant served his evidence on the landlord just prior to the hearing, I find that evidence was not served in accordance with sections 88 and 89 of the *Act* and therefore the documentary evidence of both parties was not used in the making of this decision.

### **Issue to be Decided**

Did the tenant provide the landlord with his forwarding address in writing? Did the landlord return the security deposit or make this application in a timely manner? Is the landlord entitled to the loss of income she incurred?

### **Background and Evidence**

Both parties agreed to the following: The tenancy started on November 01, 2013 and ended on October 06, 2017. The monthly rent at the end of the tenancy was \$3,370.00. At the start of the tenancy, the tenant paid a security deposit of \$1,625.00. On October 03, 2017, the tenant gave the landlord his forwarding address in writing.

The landlord agreed that on August 31, 2017, the tenant gave proper notice to end the tenancy effective September 30, 2017. However, after giving this notice the tenant requested additional time because the unit he was intending to move into would not be ready by September 30, 2017. The tenant agreed to pay rent up to October 15, 2017.

The tenant also agreed that he was informed by the landlord that in the event a new tenant was not found for October 15, 2017, he would be required to pay rent for the full month of October. The landlord testified that she made efforts to find a new tenant for October 15, 2017 but was unsuccessful. A tenant was found for November 01, 2017.

The tenant moved out on October 06, 2017 and requested for the return of the security deposit. The landlord made this application on November 22, 2017.

### **Analysis**

Section 45 of the *Residential Tenancy Act*, states that a tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that is not earlier than one month after the date the landlord receives the notice and is the day before the day in the month that rent is payable under the tenancy agreement.

Based on the testimony of both parties, I accept the landlord's evidence in respect of the claim. In this case the tenant initially gave the landlord adequate notice to end the tenancy, but subsequently requested additional time. I accept the landlord's testimony that she informed the tenant that he would have to pay rent for the entire month of October 2017, if a tenant was not found for October 15, 2017. Despite the landlord's efforts to find a tenant for the middle of the month, she was unsuccessful thereby causing her to suffer a loss of income of \$1,685.00 for the period of October 15 – October 31, 2017. Accordingly, I find that the landlord is entitled to recover this loss.

Since the landlord has proven her claim of \$1,685.00 for the loss of income that she suffered, I award her the recovery of the filing fee of \$100.00. The landlord has established a total claim of \$1,785.00.

Section 38(1) of the Act provides that the landlord must return the security deposit or apply for dispute resolution within 15 days after the later of the end of the tenancy and the date the forwarding address is received in writing.

In this case, the tenant gave the landlord his forwarding address on October 03, 2017 and moved out on October 06, 2017. The landlord made this application on November 22, 2017. I find that the landlord failed to repay the security deposit or make an application for dispute resolution within 15 days of the end of tenancy

The landlord is therefore liable under section 38(6), which provides that the landlord must pay the tenant double the amount of the security deposit. Accordingly, the landlord must return \$3,250.00 to the tenant.

Residential Tenancy Policy Guideline 17 provides policy guidance with respect to security deposits and setoffs; it contains the following provision regarding the return or retention of a security deposit through arbitration. The guideline states that the arbitrator will order the return of a security deposit, or any balance remaining on the deposit, less any deductions permitted under the Act, on a landlord's application to retain all or part of the security deposit, or a tenant's application for the return of the deposit unless the tenant's right to the return of the deposit has been extinguished under the Act. The arbitrator will order the return of the deposit or balance of the deposit, as applicable, whether or not the tenant has applied for arbitration for its return.

In this application the landlord requested the retention of the security deposit in partial satisfaction of her monetary claim. The tenant has established a claim for the return of double the deposit in the amount of \$3,250.00. Because the landlord has established a claim in the amount of \$1,785.00 which is less than the tenant's established claim of double the security deposit, it is appropriate that I order the return of the balance of tenant's established entitlement to the tenant.

Accordingly, I so order and I grant the tenant a monetary order in the amount of \$1,465.00 which represents the difference between the established claims of the tenant (\$3,250.00) and the landlord (\$1,785.00). This order may be registered in the Small Claims Court and enforced as an order of that court.

### **Conclusion**

I grant the tenant a monetary order in the amount of **\$1,465.00**.

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 08, 2018

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Residential Tenancy Branch