



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNR, MNSD, FF

### Introduction

This hearing was convened in response to an application by the Landlord and an application by the Tenant pursuant to the *Residential Tenancy Act* (the “Act”).

The Landlord applied on January 18, 2018 for:

1. A Monetary Order for unpaid rent or utilities - Section 67;
2. An Order to retain the security deposit - Section 38; and
3. An Order to recover the filing fee for this application - Section 72.

The Tenant applied on January 31, 2018 for:

1. An Order for the return of the security deposit - Section 38.

The Tenant and Landlord were each given full opportunity under oath to be heard, to present evidence and to make submissions.

### Issue(s) to be Decided

Is the Tenant entitled to return of the security deposit?

Is the Landlord entitled to the monetary amounts claimed?

### Background and Evidence

The following are agreed facts: The tenancy started on September 15, 2017 for a fixed term to end April 30, 2018. Rent of \$1,475.00 was payable on the first day of each

month. At the outset of the tenancy the Landlord collected \$737.50 as a security deposit. No move-in or move-out inspections were conducted.

The Tenant states that due to difficulties the Tenant expected not to be able to pay the rent for January 2018 and that on December 3, 2017 the Tenant informed the Landlord that she would have to move out of the unit. The Tenant states that she asked the Landlord to sign a mutual agreement to end the tenancy for December 31, 2017. The Tenant states that she signed the blank form and left it with the Landlord. The Tenant states that the date for the end of the tenancy was not filled in at the time. The Tenant states that the Landlord subsequently sent the Tenant a photo showing that the document was signed for a January 31, 2018 date. The Tenant states that she did not raise the issue of the January date at that time. The Tenant states that the Landlord had agreed to advertise the unit and obtain a new tenant for January 1, 2018. The Tenant states that she moved her belongings out in the last week of December 2017 and did not return until January 9, 2018 to clean the unit. The Tenant states that the unit did not come with keys as it had a digital entry. The Tenant states that there was no rush to clean the unit as the Landlord had informed the Tenant that there was no new tenant obtained for January 2018. The Tenant also states that the unit could not be cleaned before the end of December 2017 as the unit had no heat, it was cold and the driveway had not been cleared of snow. The Tenant states that she provided her forwarding address to the Landlord on January 9, 2018.

The Landlord states that the Tenant approached the Landlord about ending the tenancy as the Tenant was in trouble. The Landlord states that the Tenant brought the mutual agreement for signature to the Landlord. The Landlord states that the form, including the end date of January 31, 2018, had been filled out by the Tenant. The Landlord states that the agreement shows the distinct writing of the Tenant.

The Landlord states that the unit was advertised online on December 9, 2017. The Landlord states that she is not aware of the details as her daughter was acting for the

Landlord at the time and was making the advertisements. The Landlord states that she believes the unit was advertised at the same rental rate but does not know the date that it was advertised as being available. The Landlord states that the intent was to advertise the unit to June 30, 2018. The Landlord states that that prior to this advertisement the Landlord knew of a few prospective tenants who might be interested but that none of them turned out to be acceptable as one had a dog and the other had no employment. The Landlord states that the unit was difficult to rent as it was furnished and for a short term rental. The Landlord states that her daughter did all the vetting and checking of the prospective tenants. The Landlord states that three persons were brought to see the unit before the first advertisement ran and then 4 persons were shown the unit before December 31, 2018.

The Landlord states that a second advertisement was placed on the same site online on January 8, 2018. The Landlord states that she cannot recall if the unit was advertised for a January or February 2018 start date. The Landlord states that the unit was filled for a February 1, 2018 start date at the same rental rate and has continued to present. The Landlord claims unpaid rent for January 2018.

The Tenant argues that the Landlord did not place the advertisement soon enough by delaying until December 9, 2018. The Tenant states that when the unit had not been advertised immediately after December 3, 2017 the Tenant called the daughter who was upset as it was inconvenient for her to have to place the advertisement. The Tenant states that she does not believe that there were any prospective tenants available prior to the placement of the first advertisement. The Tenant states that there were only two showings in December: one before and one after Christmas 2017. The Tenant states that the Landlord's evidence of having to do checks on the prospective tenants that looked at the unit in early December 2017 is not credible as the Landlord did not carry out any background or reference checks on the Tenant. The Tenant states that the vacancy rate was at 0.2% in December 2017.

The Tenant states that the unit was left clean and claims return of the security deposit.

### Analysis

Section 26(1) of the Act provides that a tenant must pay rent when it is due under the tenancy agreement. Section 44(1)(c) provides that a tenancy ends where, inter alia, the landlord and tenant agree in writing to end the tenancy. Section 7 of the Act provides that where a tenant does not comply with the Act, regulation or tenancy agreement, the tenant must compensate the landlord for damage or loss that results. This section further provides that where a landlord or tenant claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement the claiming party must do whatever is reasonable to minimize the damage or loss.

Despite the Tenant's oral evidence that the mutual agreement was to end the tenancy for December 31, 2017, given the signed mutual agreement for a January 30, 2018 end date and the Tenant's evidence that nothing was said to the Landlord to contradict the end date at the time the Tenant received the photo of the signed mutual agreement, I find on a balance of probabilities that the Tenant agreed to end the tenancy for January 30, 2018. As such the Tenant was liable to pay the rent for January 30, 2018. Given the undisputed evidence that the Landlord knew of the Tenant's problems I also accept that at the time of signing the mutual agreement the Landlord also agreed to try to rent the unit for January 1, 2018.

I consider the Landlord's evidence of prospective tenants prior to the first advertisement to be persuasive given the details. Given the undisputed evidence that the unit was advertised on December 9, 2017 and the Tenant's evidence that there were only two showings in December 2017, I accept the Landlord's evidence that the demand for furnished short term rentals was low in December 2017 and find therefore that the failure to find a tenant for January 2018 was not due to any lack of action by the Landlord. Given the evidence of advertising the unit on December 9, 2017 and January

8, 2018 I find on a balance of probabilities that the Landlord made reasonable efforts to mitigate rental losses for January 2018. As the Tenant was liable for January 2018 rent and as the Landlord acted reasonably to mitigate the loss of January 2018 rent I find that the Landlord has substantiated an entitlement to **\$1,475.00**. As the Landlord has been successful with its claim I find that the Landlord is also entitled to recovery of the **\$100.00** filing fee for a total entitlement of **\$1,575.00**. Deducting the security deposit plus zero interest of **\$737.50** from the Landlord's entitlement leaves **\$837.50** owed by the Tenant to the Landlord.

As the Landlord has been found entitled to retain the security deposit I dismiss the Tenant's claim for return of the security deposit.

#### Conclusion

The Tenant's application is dismissed.

I Order the Landlord to retain the security deposit plus interest of \$737.50 in partial satisfaction of the claim and I grant the Landlord an order under Section 67 of the Act for the remaining **\$837.50**. If necessary, this order may be filed in the Small Claims 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: August 23, 2018

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Residential Tenancy Branch