



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes            MNDCL-S, FFL

### Introduction

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

- a monetary order for money owed or compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The tenant did not participate in the conference call hearing, which lasted approximately 10 minutes. The landlord attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The landlord testified that on April 27, 2018 he forwarded the landlord's application for dispute resolution and supporting documents via registered mail to the tenant. The landlord provided a Canada Post receipt and tracking number as proof of service. The address used for service was the tenant's service address as provided on the tenancy agreement. The Canada Post website shows that the documents were received and signed for on May 1, 2018. Based on the testimony of the landlord and in accordance with sections 89 and 90 of the *Act*, I find that the tenant has been deemed served with the application and supporting documents.

### Issue(s) to be Decided

Is the landlord entitled to a monetary order for money owed or compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement?

Is the landlord authorized to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested?

Is the landlord authorization to recover the filing fee for this application from the tenant?

### Background and Evidence

On March 30, 2018 the parties signed a tenancy agreement indicating the tenancy was to begin on April 1, 2018 on a fixed term until May 31, 2018.

Rent in the amount of \$1,500.00 was payable on the first of each month. Upon signing the tenancy agreement, the tenant remitted a security deposit in the amount of \$1,000.00 and provided two cheques for April and May rent.

The next day the tenant advised the landlord that she would not be renting the unit. Upon receipt of the tenant's notification to terminate the lease, the landlord destroyed the April and May cheques, but retained the \$1,000.00 security deposit. The landlord did not advertise or attempt to re-rent the unit as the unit was already sold and the purchasers were obtaining possession the end of May.

The landlord seeks to retain the security deposit for the tenant's breach of the tenancy agreement. The landlord also seeks to recover the filing fee paid for this application.

### Analysis

Pursuant to section 16 of the *Act*, 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 tenancy, that is, the right to occupy the unit, often begins at a later date. In this case, the tenancy agreement began on March 30, 2018 and the tenancy was to commence on April 1, 2018. Because the tenancy agreement began on March 30, 2018, this is when the provisions of the *Act* became enforceable in the relationship between the tenant and landlord.

Based on the testimony of the landlord and submitted tenancy agreement, the parties had a fixed term tenancy that was scheduled to end on May 31, 2018. The tenant ended the tenancy earlier than the date specified in the fixed term tenancy agreement, which is not in compliance with section 45 of the *Act*. Typically in such circumstances, the landlord claims a loss of rental income and then sets out to prove reasonable efforts were made to re-rent the unit. In this case the landlord did not claim a loss of rent; rather the landlord seeks to retain the security deposit.

Section 38 of the *Act* establishes that a landlord has fifteen days from the later of the date the tenancy ends or the date the landlord receives the tenant's forwarding address in writing to return the deposit or to file an application to retain it.

Because the tenant did not take occupancy of the unit and subsequently vacate the unit, the tenant did not provide a forwarding address. The landlord used the tenant's service address as provided on the tenancy agreement to serve this application and was successful. For these reasons, I am satisfied a separate written forwarding address is not needed to trigger the return of the security deposit.

The tenancy ended March 31, 2018, with the tenant's notice. The landlord did not file an arbitration application to retain the deposit until April 24, 2018, which is past the fifteen days allowable under the *Act*. The landlord did not return the full deposit and the landlord did not receive written authorization to retain it. For these reasons, I dismiss the landlord's application to retain the security. I therefore order the landlord to return the security deposit in the amount of \$1,000.00 to the tenant.

The landlord is cautioned to cease and desist from collecting security deposits in excess of one half of one month's rent, as this is a contravention of section 19 of the *Act*.

As the landlord was not successful in this application, I find that the landlord is not entitled to recover the \$100.00 filing fee paid for the application.

#### Conclusion

The landlord's entire application is dismissed without leave to reapply.

I issue a monetary order in the tenant's favour in the amount of \$1,000.00 against the landlord.

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: October 29, 2018

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Residential Tenancy Branch