



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding THORNHILL REAL ESTATE GROUP  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNSD MNRL-S FFL

### Introduction

This hearing dealt with applications from both the landlord and the tenants under the *Residential Tenancy Act* (the *Act*).

The landlord applied for:

- authorization to retain all or a portion of the tenants' security deposit in partial satisfaction of the monetary order requested pursuant to section 38;
- a monetary order for damages and loss under the *Act*, regulation or tenancy agreement pursuant to section 67; and
- authorization to recover the filing fee for this application from the tenants pursuant to section 72.

The tenants made an application for:

- authorization to obtain a return of all or a portion of the security deposit pursuant to section 38.

Both parties attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The corporate landlord was represented by its agent JB (the "landlord").

As both parties were present service of documents was confirmed. The landlord confirmed receipt of the tenant's application of July 18, 2018 and evidence. The tenant confirmed receipt of the landlord's application of July 19, 2018 and evidentiary materials. Based on the undisputed evidence of the parties I find that they were each served with the respective materials in accordance with sections 88 and 89 of the *Act*.

At the outset of the hearing, the landlord made an application requesting to amend the monetary amount of the claim sought. The landlord indicated that since filing their application they have been able to calculate accurately the actual losses and

the amount they are seeking is \$5,445.00. Pursuant to section 64(3)(c) of the *Act* and Rule 4.2 of the Rules of Procedure as correcting a claim to accurately reflect the actual losses is reasonably foreseeable, I amend the landlord's Application to increase the landlord's monetary claim from \$4,738.55 to \$5,445.00.

Issue(s) to be Decided

Is either party entitled to the security deposit for this tenancy?

Is the landlord entitled to a monetary award as claimed?

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

Background and Evidence

The parties agreed on the following facts. This fixed-term tenancy began on September 1, 2017 and was scheduled to end on August 31, 2018. The monthly rent was \$5,000.00 payable on the first of each month. The tenant gave notice on April 30, 2018 to end the tenancy on June 30, 2018. The tenant vacated the rental unit by that date. A security deposit of \$2,500.00 was paid at the start of the tenancy and is still held by the landlord. A copy of the tenancy agreement was submitted into evidence.

Neither party submitted a copy of the condition inspection report for this tenancy. The parties testified that they participated in and prepared a move-in condition inspection report. The parties testified that no condition inspection report was prepared at the end of the tenancy.

The tenant provided a forwarding address where the security deposit could be mailed by an email dated July 7, 2018. The tenant testified that they have not given written authorization that the landlord may retain any portion of the security deposit.

The landlord testified that they suffered rental income losses as a result of the tenants' ending the tenancy prior to the fixed-term date. The landlord said that they attempted to mitigate their damages by advertising the rental suite online but were only able to find a new tenant for August 1, 2018. The landlord seeks a monetary award of \$5,000.00 for the rent for July, 2018.

The landlord submits that the tenancy agreement provides that the tenant must pay liquidated damages for the cost of re-renting the suite if the tenancy is ended prior to the term of the fixed term tenancy. The tenancy agreement provides that the liquidated damage payable is \$400.00 plus GST. The landlord seeks a monetary award of \$420.00 under this heading.

The tenancy agreement provides that an administrative fee of \$25.00 applies to all late rent payments. The landlord seeks a monetary award for this amount.

### 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).

I accept the evidence of the parties that the tenant provided a forwarding address to the landlord by an email dated July 7, 2018. I accept the undisputed evidence of the tenant that they have not provided written authorization that the landlord may retain any portion of the security deposit for this tenancy.

The landlord filed their application for dispute resolution for authorization to retain the security deposit on July 19, 2018. I find that the landlord filed their application within the 15 days provided under 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 a contravention on the part of 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.

I accept the undisputed evidence of the parties that the tenancy agreement provides that liquidated damages of \$400.00 plus GST is payable for the cost of re-renting the suite should the tenant end the tenancy prior to the fixed term. I find the figure is a reasonable estimate of the costs for re-renting the suite. I accept the undisputed evidence of the parties that the tenant ended this tenancy prior to the fixed term. Therefore, I find that the landlord is entitled to a monetary award of \$420.00 for this item.

The parties agree that this tenancy was ended by the tenant prior to the fixed term. The landlord submits that despite their best efforts they were unable to find a new occupant until August 1, 2018 and therefore suffered rental income loss of \$5,000.00 for July, 2018. The tenant submits that the landlord's efforts were minimal, and not reasonable to mitigate their damages under the circumstances.

Section 7 of the *Act* explains, "If a tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying tenant must compensate the other for damage or loss that results... A landlord who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss."

This issue is expanded upon in *Residential Tenancy Policy Guideline #5* which explains that, "Where the tenant gives written notice that complies with the Legislation but specifies a time that is earlier than that permitted by the tenancy agreement, the landlord is not required to rent the rental unit or site for the earlier date. The landlord must make reasonable efforts to find a new tenant to move in on the date following the date that the notice takes legal effect."

The landlord provided some evidence showing their online postings for the rental unit. The landlord testified that the owner of the property intended to occupy the rental unit from September, 2018. The landlord testified that because the rental unit could only be rented for the 2 months of July and August, 2018 they had difficulty finding a new occupant. The landlord testified that they were able to find a new occupant for August, 2018 for \$5,000.00 a month.

While I find that the landlord took some steps to rent the suite and mitigate their damages I find that the efforts were not sufficient to justify the claim for the full month of rent. The landlord testified that they concentrated their efforts on one website and while there was some interest they did not find someone who would occupy the suite for the short period of time at the rent requested. I do not find it reasonable for the landlord to simply rely on an online posting without further efforts to advertise and rent the suite. I do not find it is reasonable that the landlord was unable to find a new tenant when they were provided with two month notice.

Under the circumstances I find that a \$2,000.00 monetary award, approximately 40% of the monthly rent to be reasonable. I issue an award in that amount accordingly.

The tenancy agreement provides that late rent payments, returned cheques and NSF payments are subject to a charge of \$25.00. I find that there is no evidence that any of

those circumstances apply. The monetary award for loss of rental income is not a late rent payment. Therefore, I find that there is no evidentiary basis for this portion of the claim and I dismiss it accordingly.

As the landlord's application was successful the landlord is authorized to recover the \$100.00 filing fee for their application.

In accordance with sections 38 and the offsetting provisions of 72 of the *Act*, I allow the landlord to retain the security deposit of \$2,500.00 in partial satisfaction of the monetary award issued in the landlord's favour.

### Conclusion

Pursuant to section 67 of the *Act*, I issue a monetary award in the landlord's favour for the amount of \$2,520.00 under the following terms. I order that the landlord retain this amount from the security deposit in full satisfaction of their claim. As the remainder of the monetary award is \$20.00, I decline to issue a monetary award for this minimal amount.

<b>Item</b>	<b>Amount</b>
Liquidated Damages	\$420.00
Loss of Rental Income	\$2,000.00
Filing Fee	\$100.00
Less Security Deposit	-\$2,500.00
<b>TOTAL</b>	<b>\$20.00</b>

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: November 23, 2018

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Residential Tenancy Branch