



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      FFL, MNRL-S (Landlord)  
                             MNDCT, MNSD (Tenant)

### Introduction

This hearing was convened by way of conference call in response to cross Applications for Dispute Resolution filed by the parties.

The Tenant filed his application June 6, 2018 (the “Tenant’s Application”). The Tenant applied for compensation for monetary loss or other money owed and the return of double the security deposit.

The Landlord filed her application July 11, 2018 (the “Landlord’s Application”). The Landlord applied to recover unpaid rent and to keep the security deposit. The Landlord also sought reimbursement for the filing fee.

This matter came before me for a hearing on August 16, 2018 at which time it was adjourned. An Interim Decision was issued August 16, 2018 and should be read with this decision.

At the adjourned hearing, the Landlord appeared with the Translator. Nobody appeared for the Tenant.

I explained the hearing process to the Landlord and Translator and neither had questions when asked. Both provided affirmed testimony.

In relation to the Tenant’s request for compensation for monetary loss or other money owed, I did not hear from the Tenant on this issue at the first hearing date. The Tenant did not appear at the adjourned hearing date to provide evidence in relation to his request. Pursuant to rule 7.3 of the Rules of Procedure (the “Rules”), the Tenant’s request is dismissed without leave to re-apply.

I will still consider the Tenant's request for the return of double the security deposit as I heard the parties on this issue at the first hearing date. Further, the issue of the security deposit is raised by the Landlord's Application in any event.

The Landlord was given an opportunity to present relevant oral evidence, make relevant submissions and ask relevant questions. I have considered all documentary evidence and oral testimony of the parties. I will only refer to the evidence I find relevant in this decision.

### Issues to be Decided

1. Is the Tenant entitled to the return of double the security deposit?
2. Is the Landlord entitled to recover unpaid rent?
3. Is the Landlord entitled to keep the security deposit?
4. Is the Landlord entitled to reimbursement for the filing fee?

### Background and Evidence

The Landlord had submitted a Monetary Order Worksheet requesting \$1,245.00 being \$830.00 for unpaid rent for February of 2018 and the \$415.00 security deposit. At the hearing, the Translator confirmed the Landlord was seeking to keep the \$415.00 security deposit towards the \$830.00 for unpaid rent.

The Translator said there was an oral tenancy agreement between the Landlord and Tenant in relation to the rental unit. The Tenant, through his translator, took the position that there was no "contract". The Tenant said the Landlord told him he could try living at the rental unit for one month and that if he did not like it he could leave. The Tenant agreed he paid the Landlord rent to live at the rental unit and that he paid a security deposit.

Both parties agreed the tenancy started January 1, 2018. The Translator said the Tenant wanted to see if he liked the rental unit and the Landlord allowed him to move in on the understanding that he would give one months notice if he wanted to leave. The Translator said this was a month-to-month tenancy. The Landlord did not provide evidence to support this position.

The Tenant did not agree this was a month-to-month tenancy. He said the Landlord did not mention anything about giving one months notice to vacate. He testified that it was understood he could stay if he liked the rental unit and leave if he did not. He said there were no further conditions.

Both parties agreed rent was \$830.00 per month. The Translator said rent was due on the last day of each month. The Tenant testified that there was no agreement about when rent was due.

Both parties agreed the Tenant paid a \$415.00 security deposit. The Translator confirmed the Landlord still holds this.

Both parties agreed the Tenant vacated the rental unit January 31, 2018.

In relation to a forwarding address, I understood the Tenant to testify that he provided his forwarding address to the Landlord twice, the second time being in a letter sent March 14, 2018. The Translator said the Landlord received the March 14<sup>th</sup> letter approximately three days after it was sent. The Translator said this was the first time the Landlord received the Tenant's forwarding address.

The Translator confirmed the Landlord did not have an outstanding monetary order against the Tenant at the end of the tenancy. The Translator said the Tenant did not agree in writing at the end of the tenancy that the Landlord could keep some or all of the security deposit.

The Translator said the Landlord and Tenant did a move-in inspection on December 31, 2017. The Tenant testified that no move-in inspection was done. Both parties agreed a Condition Inspection Report was not completed on move-in.

In relation to a move-out inspection, the Translator said the Tenant just vacated the rental unit and so the Landlord inspected the rental unit by herself. The Translator said the Landlord did not offer the Tenant two opportunities to do a move-out inspection. The Translator said the Landlord did not do a Condition Inspection Report on move-out. The Tenant testified that no move-out inspection was done. The Translator advised as follows in relation to the Landlord's request to recover unpaid rent. The Tenant told the Landlord about a heating issue in the rental unit on January 23, 2018. The Landlord tried to get a plumber to attend but one could not until later in the week. On January 24, 2018, the Tenant told the Landlord he was going to leave.

The Landlord had to try to secure a tenant for February. The Landlord posted an advertisement for the rental unit immediately. The rental unit was posted for the same rent amount as what the Tenant paid. Potential tenants came and looked at the rental unit but did not like it. The Landlord could not get a tenant for February. The Tenant vacated the rental unit January 31, 2018.

The Tenant submitted a letter acknowledging that he texted the Landlord January 24, 2018 saying he was terminating the tenancy by January 31, 2018.

The Landlord submitted text messages from January and February between her and potential tenants.

### Analysis

Section 7 of the *Residential Tenancy Act* (the “Act”) states:

(1) If a...tenant does not comply with this Act...or their tenancy agreement, the non-complying...tenant must compensate the [landlord] for damage or loss that results.

(2) A landlord...who claims compensation for damage or loss that results from the [tenant's] non-compliance...must do whatever is reasonable to minimize the damage or loss.

Policy Guideline 16 deals with compensation for damage or loss and states in part the following:

It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. In order to determine whether compensation is due, the arbitrator may determine whether:

- a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
- loss or damage has resulted from this non-compliance;
- the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
- the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

Under sections 24 and 36 of the *Act*, landlords and tenants can extinguish their rights in relation to the security deposit if they do not comply with the *Act* and *Residential Tenancy Regulations*. Further, section 38 of the *Act* sets out specific requirements for dealing with a security deposit at the end of a tenancy.

The parties disagreed about whether a move-in inspection was done. Whether I accept the testimony of the Landlord or Tenant, I find the Tenant did not extinguish his rights in relation to the security deposit under section 24 of the *Act*.

In relation to a move-out inspection, the Translator said the Landlord did not offer the Tenant two opportunities to do a move-out inspection and the Tenant said a move-out inspection was not done. Given this, I find the Tenant did not extinguish his rights in relation to the security deposit under section 36 of the *Act*.

There was no issue that the Tenant vacated the rental unit January 31, 2018. Nor was there an issue that the Landlord received the Tenant's forwarding address in writing around March 17, 2018. Pursuant to section 38(1) of the *Act*, the Landlord was required to repay the security deposit or apply for dispute resolution claiming against it within 15 days of receiving the Tenant's forwarding address in writing around March 17, 2018. The Landlord filed the Landlord's Application July 11, 2018, well outside the 15-day time limit set out in section 38(1) of the *Act*.

I note that none of the exceptions set out in sections 38(2) to 38(4) of the *Act* apply in this case given my finding that the Tenant did not extinguish his rights in relation to the security deposit and given the testimony of the Translator in relation to the absence of an outstanding monetary order or consent from the Tenant allowing the Landlord to keep the security deposit.

I find the Landlord failed to comply with section 38(1) of the *Act*. Therefore, pursuant to section 38(6) of the *Act*, the Landlord cannot claim against the security deposit and must pay the Tenant double the amount of the security deposit. The Landlord therefore owes the Tenant \$830.00.

The Landlord is still entitled to seek to recover unpaid rent and I consider that request now.

I note that I accept there was an oral tenancy agreement between the parties in relation to the rental unit. The Tenant took the position that there was no "contract" but acknowledged he paid the Landlord rent to stay in the rental unit. The Tenant's position

seemed to be based on the fact that there was no written tenancy agreement; however, this is not required under the *Act*.

The parties disagreed about the term of the tenancy agreement. The Landlord took the position that the tenancy agreement was a month-to-month tenancy. The Tenant took the position that there was no term discussed and that the Landlord told him he could leave whenever if he did not like the rental unit.

Whether this was a month-to-month tenancy agreement or not, section 45 of the *Act* states the following in relation to a tenant ending a periodic tenancy:

45 (1) A tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that

(a) is not earlier than one month after the date the landlord receives the notice, and

(b) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

(3) If a landlord has failed to comply with a material term of the tenancy agreement and has not corrected the situation within a reasonable period after the tenant gives written notice of the failure, the tenant may end the tenancy effective on a date that is after the date the landlord receives the notice.

(4) A notice to end a tenancy given under this section must comply with section 52...

Neither party is permitted to contract outside of the *Act* and therefore the Tenant was required to comply with section 45 of the *Act* in relation to ending the tenancy. There is no issue that the Tenant gave notice to the Landlord on January 24, 2018 stating he was ending the tenancy as of January 31, 2018. The Tenant acknowledged this in his written submissions. I find the Tenant failed to comply with section 45(1)(a) of the *Act* by providing only seven days notice to end the tenancy.

There is no evidence before me that the Tenant complied with section 45(3) of the *Act*. I note that I accept the undisputed testimony of the Translator that the Tenant advised the Landlord for the first time on January 23, 2018 that there was a heating issue and

advised the Landlord the next day that he was vacating the rental unit by January 31, 2018.

I also note that sending a text message is not sufficient to end a tenancy. The Tenant was required to comply with section 52 of the *Act* in relation to the form and content of the notice.

I find the Tenant failed to comply with section 45 of the *Act* given the timing and form of his notice to end the tenancy.

I accept the undisputed testimony of the Translator that the Landlord was unable to secure a tenant for February of 2018. I note that this is understandable given the short notice provided by the Tenant. I accept that the Landlord lost \$830.00 for February rent given the Tenant's breach of section 45 of the *Act*.

Based on the undisputed testimony of the Translator, and evidence submitted, I accept that the Landlord posted the rental unit for rent immediately after the Tenant gave notice. I also accept that it was posted for the same rent amount as what the Tenant had paid. I am satisfied the Landlord attempted to re-rent the rental unit for February and therefore tried to minimize her loss.

In the circumstances, I am satisfied the Landlord is entitled to recover rent for February of 2018 and I award the Landlord \$830.00.

Given both parties were successful in their applications, I decline to award the Landlord reimbursement for the filing fee.

In summary, I find the Landlord owes the Tenant \$830.00. However, the Tenant owes the Landlord \$830.00. Therefore, the Landlord can keep the security deposit and neither party is awarded a monetary order.

### Conclusion

The Tenant's request for compensation is dismissed without leave to re-apply as he failed to appear at the adjourned hearing and provide evidence to support his request.

The Tenant's request for return of double the security deposit is granted and the Landlord owes the Tenant \$830.00. However, the Landlord is entitled to recover unpaid

rent in the amount of \$830.00 and therefore the Tenant owes the Landlord \$830.00. Therefore, the Landlord can keep the security deposit and neither party is awarded a monetary order.

I decline to award the Landlord reimbursement for the filing fee.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Act*.

Dated: November 06, 2018

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Residential Tenancy Branch