



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

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

### **Introduction**

This hearing dealt with an application by the landlord, pursuant to the *Residential Tenancy Act*. The landlord applied for a monetary order for loss of income, the filing fee and to keep the security deposit in satisfaction of his 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 parties confirmed receipt of each other's evidence. I find that the parties were served with evidentiary materials in accordance with sections 88 and 89 of the *Act*.

### **Issues to be decided**

Is the landlord entitled to keep the security deposit in partial satisfaction of his claim for loss of income and the filing fee?

### **Background and Evidence**

On June 09, 2018, the parties entered into a tenancy agreement and the tenant paid a security deposit in the amount of \$700.00 for the landlord to hold the rental unit for a tenancy that would start on July 01, 2018.

The tenant testified that on July 01, 2018, she paid rent to the landlord by e-transfer. During the day, the tenant found that there were problems with the unit and contacted the landlord. The landlord testified that he was at a party and informed the tenant by text message that he was unable to have a conversation with the tenant at the time the tenant contacted him. Sometime later on July 01, 2018, the tenant cancelled the e-transfer for rent for July. The landlord contacted the tenant on July 02, 2018.

On July 03, 2018, the landlord gave the tenant a ten day notice to end tenancy. The landlord sent a copy of the notice by email and the tenant responded to the email informing the landlord that she no longer wished to continue the tenancy.

The landlord advertised the availability of the rental unit and found a tenant for August 01, 2018. The landlord has applied for the loss of income suffered for July, for the recovery of the filing fee of \$100.00 and to retain the security deposit in partial satisfaction of his claim. The landlord offered to settle the loss he had suffered by retaining the security deposit but the tenant declined the offer.

### **Analysis**

Section 16 of the *Residential Tenancy Act* states that 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 parties entered into a tenancy agreement on June 09, 2018 at which time the tenant paid the security deposit. Pursuant to section 16, the rights and obligations of both parties took effect that date, even though the tenant never moved in. Once the security deposit is paid, the tenancy is considered started. Accordingly, the tenant is obliged to give the landlord one month's notice to end the tenancy and the landlord is entitled to rental income for that month.

In this case, the tenant entered into a tenancy agreement, but failed to give the landlord adequate notice to end the tenancy. The landlord made efforts to mitigate his losses by showing the suite and was able to find a tenant August 01, 2018. This resulted in a loss of income to the landlord for July 2018 in the amount of one month's rent of \$1,400.00.

*Residential Tenancy Policy Guideline #3* states that the damages awarded are an amount sufficient to put the landlord in the same position as if the tenant had not breached the agreement. As a general rule, this includes compensating the landlord for any loss of rent up to the earliest time that the tenant could legally have ended the tenancy. Therefore, I find that the landlord is entitled to the income that he lost for the month of July 2018, in the amount of \$1,400.00.

Since the landlord has proven his claim I grant him the recovery of the filing fee of \$100.00.

Overall the landlord has established a claim of \$1,500.00. . I order that the landlord retain the security deposit and interest of \$700.00 in partial satisfaction of the claim and I grant the landlord an order under section 67 of the *Residential Tenancy Act* for the balance due of \$800.00. This order may be filed in the Small Claims Court and enforced as an order of that Court.

**Conclusion**

The landlord may retain the security deposit of \$700.00. I grant the landlord a monetary order in the amount of \$800.00.

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: November 19, 2018

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Residential Tenancy Branch