



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDC, MNSD, FF

### Introduction

This hearing was convened in response to an application for dispute resolution made April 23, 2019 by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. A Monetary Order for compensation - 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 Landlord and Tenant were each given full opportunity under oath to be heard, to present evidence and to make submissions.

### Issue(s) to be Decided

Is the Landlord entitled to the compensation claimed?

Is the Landlord entitled to retain the security deposit?

Is the Landlord entitled to recovery of the filing fee?

### Background and Evidence

The following are agreed facts: There is no written tenancy agreement. The tenancy started on July 15, 2018 and ended on November 15, 2018. Rent of \$900.00 was payable on the first day of each month. At the outset of the tenancy the Landlord collected \$450.00 as a security deposit.

The Tenant states that it provided its forwarding address in a handwritten letter by registered mail on December 11, 2018. The Tenant states that at a previous hearing the Landlord disputed this evidence. I note that this previous hearing on the Tenant's application for return of the security deposit resulted in a Decision dated April 11, 2019 (the "Decision"). The Decision notes the Landlord's evidence that the forwarding address was only received with the Tenant's application for that previous hearing. The Decision also finds that the Landlord was deemed to have received the forwarding address on December 16, 2018 but still allows the Landlord 15 days from the date of the hearing to make its application to retain the security deposit.

The Landlord states that on October 23, 2018 the Tenant gave notice to end the tenancy for November 15, 2019. The Landlord states and the Tenant does not dispute that the Tenant only paid \$450.00 for November 2019 rent. The Landlord claims \$450.00 for the remainder of the November 2019 rent.

The Tenant states that the Landlord was asked whether it was okay for the Tenant to end the tenancy for November 15, 2018 and was told that if it was not okay then the Tenant would stay the extra time. The Tenant states that the Landlord informed the Tenant that it was okay to end the tenancy as the Landlord would get the unit rented again "in no time." The Tenant states that they shook hands on the agreement. The Landlord states that there is no recall of shaking hands but that as the Landlord knew it was not going to get more rent the Tenant was told that the Landlord would keep the security deposit instead of the rent.

The Landlord states that on November 1, 2018 the unit was advertised online on three different sites and in the local paper for rent of \$900.00. The Landlord states that a new tenant was obtained for December 1, 2018. The Landlord states that it did not advertise the unit sooner as the Landlord did not know when the Tenant gave notice that full rent would not be paid for November 2018. The Tenant states that the a few days after

giving the notice to end tenancy the Landlord was asked whether a new tenant was found. The Tenant states that the Landlord informed the Tenant that it could not advertise the unit online as its computer was not working but that the Landlord already knew prospective tenants. The Landlord agrees that the computer was not working but that the advertisements were made through use of an iPad.

### Analysis

Section 26(1) of the Act provides that a tenant must pay rent when it is due under the tenancy agreement. When a tenancy ends no further rent is payable under the tenancy agreement. The Tenant's evidence of the handshake in relation to the end of the tenancy was very persuasive and held a ring of truth, particularly in light of no written tenancy agreement being provided to the Tenant from the Landlord. For this reason, I prefer the Tenant's evidence and as there was no written tenancy agreement allowing only written amendments I find on a balance of probabilities that the Landlord mutually agreed with the Tenant to end the tenancy on November 15, 2018 and that no further rent was payable after that date.

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. As the tenancy agreement was mutually ended I find that the Landlord has not substantiated that the Tenant was out of compliance with either the tenancy agreement or the Act and I dismiss the claim for compensation.

Section 38(4) of the Act provides that a landlord may retain an amount from a security deposit or a pet damage deposit if at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant. Section 21 of the Act provides that unless the landlord gives written consent, a tenant must not apply a security deposit or a pet damage deposit as rent. The Landlord's evidence of having informed the Tenant that it would retain the security deposit as rent to the end of November 2018 is not evidence of a written agreement by the Tenant for the

Landlord to retain the security deposit for rent and is not evidence that the Landlord consented in writing to apply the security deposit to rent for November 2018. As a result, I find that the Landlord is not entitled to retain the security deposit for November 2019 rent and I dismiss the claim to retain the security deposit. As the Landlord's claims have not been successful I decline to award recovery of the filing fee and in effect the application is dismissed in its entirety. I order the Landlord to forthwith return the Tenant's security deposit of \$450.00 plus zero interest.

### Conclusion

The Landlord's application is dismissed.

I grant the Tenant an order under Section 67 of the Act for **\$450.00**. 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 Act.

Dated: July 24, 2019

---

Residential Tenancy Branch