



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Dispute Codes**

FFL MNDCL-S MNSD

### **Introduction**

This hearing dealt with applications from both the landlord and tenant pursuant to the Residential Tenancy Act.

The landlord applied for:

- A monetary award for damages and loss pursuant to section 67;
- Authorization to retain the security deposit for this tenancy pursuant to section 38; and
- Authorization to recover the filing fee from the tenant pursuant to section 72.

The tenant applied for:

- A return of the security deposit for this tenancy pursuant to section 38.

Both parties attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

As both parties were present service of documents was confirmed. The parties each confirmed receipt of the other's materials. Based on the testimonies I find that each party was served with the respective materials in accordance with sections 88 and 89 of the *Act*.

### **Issue(s) to be Decided**

Is the landlord entitled to a monetary award as claimed?

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

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

### Background and Evidence

This periodic tenancy ended on April 30, 2019. The monthly rent was \$1,000.00 payable by the first of each month. A security deposit of \$500.00 was paid at the start of the tenancy and is still held by the landlord. No condition inspection report was prepared at any time for this tenancy.

The parties agree that the tenant gave verbal notice to the landlord to end the tenancy on April 9, 2019. The tenant did not provide written notice to the landlord. The tenant provided a forwarding address to the landlord by a letter dated May 13, 2019.

The landlord says that upon being provided verbal notice they sought a new occupant for the rental unit and found someone who could begin a tenancy on May 15, 2019. The landlord submitted into evidence a copy of the new tenancy agreement with the occupant showing a start of tenancy date of May 15, 2019 at a monthly rent of \$1,050.00. The landlord seeks a monetary award in the amount of \$500.00, the equivalent of the unpaid rent for May 1-May 15, 2019.

The tenant submits that the landlord attempted to impose a rent increase prior to the tenant giving notice to end the tenancy. The tenant says that the landlord informed her verbally of a rent increase and the tenant chose to end the tenancy rather than pay the proposed increase.

The tenant says that the new occupant of the rental unit began occupying the rental suite on May 1, 2019 and the landlord suffered no loss. The tenant submitted into evidence a hand written note from a family member stating they believe the new occupant began residing in the rental unit on May 1, 2019 and was instructed by the landlord to state the tenancy began at a later date.

### Analysis

Section 38 of the *Act* requires the landlord to either return the tenant's security deposit or file for dispute resolution for authorization to retain a security deposit within 15 days of the end of a tenancy or receiving a forwarding address in writing. If that does not occur, the landlord must pay a monetary award pursuant to section 38(6) 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 authorization to retain all or a portion of the security deposit.

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. 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 of the *Act* 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.

In the matter at hand the tenant provided a forwarding address in writing on May 13, 2019 and the landlord filed their application for dispute resolution on May 28, 2019. As such, I find that the landlord filed their application to retain the security deposit within 15 days of being provided a forwarding address on May 13, 2019, as set out under the *Act*.

The parties have testified that no condition inspection report was prepared at any time during the tenancy. Section 24 of the *Act* outlines the consequences to the landlord if reporting requirements are not met. The section reads in part:

24 (2) The right of a landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord  
...  
(c) does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.

Furthermore, section 38 (5) of the *Act* provides that the landlord's right to claim for damages or obtain the tenant's written consent to retain the security deposit for damages is extinguished when the landlord does not complete a condition inspection report at the start of the tenancy.

Accordingly, I find that the tenant is entitled to a return of the security deposit for this tenancy in the amount of \$500.00. No interest is payable over this period.

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."

Residential Tenancy Policy Guideline 5 states that while it is not necessary that the party making a claim do everything possible to minimize the loss, some reasonable efforts must be taken. The Guideline further provides that, "Where the tenant has vacated or abandoned the rental unit or site, the landlord must try to rent the rental unit or site again as soon as is practicable."

The landlord claims the equivalent of half a month's rent, claiming that they suffered a loss when the tenant provided insufficient notice to end the tenancy. The landlord provided evidence that they were able to find a new occupant for the rental unit commencing May 15, 2019 at a slightly higher monthly rate.

The tenant agrees that they did not provide sufficient notice but disputes that the landlord suffered any loss. I find that the tenant's submissions to be less credible and believable than the evidence of the landlord. The landlord's testimony is supported in documentary evidence by way of a signed tenancy agreement. The tenant's submission is based on the hand written note of a family member who was not called as a witness at the hearing. I find that the tenant's submission that the new occupant was coerced to falsify the tenancy agreement has no air of reality. Furthermore, I find the tenant's testimony that the landlord attempted to impose a rent increase in contravention of the Act to be irrelevant to the matter at hand, not supported in any documentary evidence and is not particularly credible. Based on the totality of the evidence I find that the landlord has established that they have suffered a monetary loss as a result of the tenant's actions.

Based on the evidence that the landlord was able to find a new occupant for the rental unit commencing May 15, 2019 at a rate of \$1,050.00, I find that the monetary amount of the loss to be \$450.00.

I issue a monetary award in the landlord's favour in that amount pursuant to section 67 of the Act.

As the landlord's application was partially successful the landlord may recover a portion of their filing fee of \$50.00 from the tenant.

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

Conclusion

The landlord is authorized to retain the full amount of the security deposit for this tenancy of \$500.00 in satisfaction of their monetary award for loss of rent and partial recovery of filing fees.

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: August 29, 2019

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Residential Tenancy Branch