



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes:** MT, MNDC, MNSD

### **Introduction**

This hearing dealt with an application by the tenant pursuant to the *Residential Tenancy Act*. The tenant applied for a monetary order for compensation and for the return of the security deposit. The tenant also requested that he be granted additional time to make this application.

The tenant attended the hearing accompanied by his advocate and support worker. The tenant testified that he served the landlord with the notice of hearing and evidence package on June 26, 2019, by registered mail. The tenant filed a copy of the tracking slip and stated that upon checking the tracking history, he found that the landlord had picked up the package on July 02, 2019.

Despite having been served the notice of hearing, the landlord did not attend the hearing. The tenant attended the hearing and was given full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

### **Issue to be Decided**

Is the tenant entitled to more time to dispute the notice to end tenancy? Is the tenant entitled to a monetary order?

### **Background and Evidence**

The tenancy ended on June 01, 2017 pursuant to a mutual agreement to end tenancy. The monthly rent was \$500.00 payable on the first of each month and prior to moving in the tenant paid a security deposit of \$250.00.

On April 30, 2017, the parties entered into a written agreement to end tenancy, a copy of which was filed into evidence. In that agreement the landlord promised to pay the tenant \$750.00 for moving expenses.

On May 01, 2017, the landlord gave the tenant a cheque for this amount which the tenant deposited into his account. On June 13, 2017, the bank returned the cheque and informed the tenant that the landlord had closed his bank account.

On September 06, 2017 the tenant provided the landlord with his forwarding address by way of an application for dispute resolution. The hearing was set for March 27, 2018. On March 21, 2018, the tenant was admitted to the hospital and had to have his leg amputated. The tenant called the Residential Tenancy Branch office to explain his situation as he was unable to attend the hearing. The hearing was cancelled.

The tenant stated that since then he has been in very poor health with multiple problems which landed him in and out of hospital. The tenant stated that he was immobile and had several other medical issues that rendered him unable to reapply until he received help from social services. The tenant made this application on June 24, 2019

The tenant has applied for a monetary order for the compensation promised to him by the landlord in the mutual end to tenancy agreement and for the return of the security deposit.

### **Analysis**

Section 60 of the *Residential Tenancy Act* addresses the latest time that an application for dispute resolution can be made. Section 60(1) states that an application for dispute resolution must be filed within two years of the date that the tenancy ended. If an application is not made within the two-year period, a claim arising under this *Act* or the tenancy agreement in relation to the tenancy ceases to exist.

The tenant testified that the tenancy ended on June 01, 2017. The tenant filed this application on June 24, 2019. Accordingly I find that the tenant failed to make this application within two years of the date the tenancy ended.

I am unable to grant the tenant more time to make his application without proof that exceptional circumstances prevented him from complying with the statutorily prescribed timeframe.

Under section 66(1) of the *Act*, an extension of time can **only** be granted where the applicant has established that there are **exceptional circumstances** (Sec. 66). In this matter, the word *exceptional* implies that the reason(s) for failing to apply for dispute resolution in the time required are very strong and compelling.

On reflection of the reasons advanced by the tenant, I find that the tenant did face severe medical issues which involved an amputation of his leg. The tenant also had other health issues which got worse by his lack of mobility. The tenant was involved in the rehabilitation process. The tenant made his initial application in a timely manner but could not attend the hearing due to hospitalization. I find that the tenant has proven that *exceptional circumstances* prevented him from filing for dispute resolution within the legislated time limit. Accordingly I grant the tenant an extension of time to make this application.

Based on the testimony and documents filed into evidence, I accept that the landlord paid the tenant with a cheque from a bank account that was not in operation thereby rendering the tenant unable to collect on the cheque. Therefore, I find that the landlord breached a term of the agreement and must pay the tenant \$750.00.

At this time the landlord is also holding a security deposit of \$250.00. The tenant testified that he provided the landlord with his forwarding address on September 06, 2017, by way of his application for dispute resolution.

A forwarding address only provided by the tenant on the application for dispute resolution form does not meet the requirement of a separate written notice and should not be deemed as providing the landlord with the forwarding address. Additionally landlords who receive the forwarding address in the application may believe that because the matter is already scheduled for a hearing, it is too late to file a claim against the deposit.

Since I have determined that the tenant had not provided the landlord with a forwarding address, prior to serving the landlord with the notice of hearing package, I find that the landlord had no way of returning the deposit by mail or making application for damages against it. The landlord is not bound by the 15-day time frame after receipt of the forwarding address contained in the notice of hearing. Therefore I the tenant is not entitled to the return of double the deposit.

However the tenant is entitled to the return of the base amount of the security deposit.

Overall the tenant has established a claim of \$1,000.00 which consists of \$750.00 as per the mutual agreement to end tenancy plus \$250.00 for the return of the security deposit.

Accordingly, I grant the tenant a monetary order under section 67 of the *Residential Tenancy Act*, for this amount. This order may be filed in the Small Claims Court and enforced as an order of that Court.

**Conclusion**

I grant the tenant a monetary order for \$1,000.00.

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: October 04, 2019

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Residential Tenancy Branch