



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes**      For the landlord: MNDCL-S, FFL  
For the tenant: MNSD, MNDCT, FFT

### **Introduction**

This was a cross application hearing that dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a monetary order for compensation for damage and loss under the Act, the Regulation or tenancy agreement, pursuant to section 67 of the Act;
- an authorization to retain the tenant's security deposit under Section 38 of the Act; and
- an authorization to recover the filing fee for this application, pursuant to section 72 of the Act.

This hearing also dealt with the tenant's application pursuant to the *Act* for:

- an order for the landlord to return the security deposit, pursuant to section 38 of the Act;
- a monetary order for compensation for damage and loss under the Act, the Regulation or tenancy agreement, pursuant to section 67 of the Act; and
- an authorization to recover the filing fee for this application, pursuant to section 72 of the Act.

Both parties attended the hearing. The landlord was assisted by interpreter SC. All were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

### **Service of documents**

The landlord affirmed her application and the evidence package were sent to the tenant by registered mail on May 07, 2020. The tenant confirmed receipt of the package, but stated it contained only the application. The landlord then corrected herself and stated all the evidence was submitted by registered mail on August 12, 2020. The tenant

confirmed receipt of the package, but it contained only print screens of two text messages.

Based on the convincing testimony provided by the tenant, I accept only the print screens of the two text messages into evidence.

The tenant affirmed his application was served by registered mail and the evidence was not served. The landlord confirmed receipt of the application on May 30, 2020.

Based on both parties testimony, I accept the service of both applications and the two print screens of text messages evidence submitted by the landlord, in accordance with sections 88 and 89 of the Act. All the other evidence submitted by the parties is excluded.

#### Preliminary Issue – Partial Withdrawal of the Application

The tenant advised he is only seeking for the return of his security deposit and an authorization to recover the filing fee for this application.

Therefore, pursuant to my authority under section 64(3)(c) of the Act, I amended the tenant's application to withdraw his claim for a monetary order for compensation for damage and loss.

#### Issues to be Decided

Is the landlord entitled to:

- a monetary award for compensation for damages caused by the tenant?
- an authorization to retain the tenant's security deposit?
- an authorization to recover the filing fee for this application?

Is the tenant entitled to:

1. an order for the landlord to return the security deposit?
2. an authorization to recover the filing fee for this application?

The landlord is claiming for \$4,800.00 for loss of rental income for the months of May, June, July and August 2020. The tenant is claiming for the return of double the deposits.

#### Background and Evidence

While I have turned my mind to the evidence and the testimony of the attending parties, not all details of the submissions and arguments are reproduced here. The relevant and important aspects of the claims and my findings are set out below. I explained rule 7.4

to the attending parties; it is their obligation to present the evidence to substantiate their applications.

Both parties agreed the fixed term tenancy started on December 16, 2019 and ended on April 25, 2020. The agreed end date of the fixed term tenancy was August 31, 2020. Monthly rent was \$1,200.00, due on the first day of the month. At the outset of the tenancy the landlord collected a security deposit of \$1,200.00 and a fob deposit of \$200.00, totalling \$1,400.00 (the deposits). The landlord still holds the deposits in trust.

Both parties also agreed the tenant's forwarding address was received in writing by the landlord on May 05, 2020. The landlord applied for dispute resolution on May 05, 2020.

The landlord and the tenant agreed the landlord was notified in writing on April 10 that the tenant will vacate the rental unit and the tenancy will end on April 25, 2020. The landlord stated on that date the tenant returned the keys and authorized her to retain \$200.00 from the deposits, as he acknowledged he breached the tenancy agreement. The tenant affirmed the rental unit was professionally cleaned and he did not authorize the landlord to retain any amount from the deposits. The parties did not engage in a conversation about the payment of the remaining months of the fixed term tenancy.

The parties had an altercation and the tenant threatened to publicize negative information about the landlord. The landlord said the tenant physically assaulted her, the police attended and the landlord was taken to the hospital. The tenant rebutted and stated he was the one physically assaulted.

The landlord has been advertising the rental unit on several websites and virtual forums since April 26, 2020, asking for the same amount of rent. The tenant has been continuously posting on the same websites and virtual forums negative information about the landlord, stating she does not return the deposits and is not an honest landlord.

The landlord stated that because of the continuous posts from the tenant she has not been able to re-rent the rental unit.

### Analysis

Section 7 of the Act states:

Liability for not complying with this Act or a tenancy agreement

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

(2) A landlord or tenant 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 Branch Policy Guideline 16 sets out the criteria which are to be applied when determining whether compensation for a breach of the Act is due. It states:

The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. 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.

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

#### Landlord's claim for loss of rental income

Based on the parties undisputed testimony, there was a fixed term tenancy agreement until August 31, 2020, monthly rent was \$1,200.00 and the rental unit was not re-rented. Thus, I find the landlord suffered a loss of rental income for the months of May, June, July and August 2020 in the total amount of \$4,800.00.

Residential Tenancy Branch Policy Guideline 3 sets conditions for loss of rental income claims. It states:

If the landlord elects to end the tenancy and sue the tenant for loss of rent over the balance of the term of the tenancy, the tenant must be put on notice that the landlord intends to make such a claim. Ideally this should be done at the time the notice to end the tenancy agreement is given to the tenant. The filing of a claim for damages for loss

of rent and service of the claim upon the tenant while the tenant remains in possession of the premises is sufficient notice. Filing of a claim and service upon the tenant after the tenant has vacated may or may not be found to be sufficient notice, depending on the circumstances. Factors which the arbitrator may consider include, but are not limited to, the length of time since the end of the tenancy, whether or not the tenant's whereabouts was known to the landlord and whether there had been any prejudice to the tenant as a result of the passage of time. The landlord may also put the tenant on notice of the intent to make a claim of that nature by way of a term in the tenancy agreement.

[...]

The damages awarded are an amount sufficient to put the landlord in the same position as if the tenant had not breached the agreement.

I find that although there was no formal notice from the landlord to the tenant about the payment of future rent of the fixed term tenancy, the tenant was aware of his obligations, the tenant was also aware the landlord was trying to re-rent the unit and willfully posted negative information about the landlord on the same virtual forums the landlord was listing the rental unit.

Further to that, Policy Guideline 5 states:

**When a tenant ends a tenancy before the end date of the tenancy agreement or in contravention of the RTA or MHPTA, the landlord has a duty to minimize loss of rental income. This means a landlord must try to:**

- 1. re-rent the rental unit at a rent that is reasonable for the unit or site; and**
- 2. re-rent the unit as soon as possible.**

For example, if on September 30, a tenant gives notice to a landlord they are ending a fixed term tenancy agreement early due to unforeseen circumstances (such as taking a new job out of town) and will be vacating the rental unit on October 31, it would be reasonable to expect the landlord to try and rent the rental unit for the month of November. **Reasonable effort may include advertising the rental unit for rent at a rent that the market will bear.**

If the landlord waited until April to try and rent the rental unit out because that is when seasonal demand for rental housing peaks and higher rent or better terms can be secured, a claim for lost rent for the period of November to April may be reduced or denied.

**(emphasis added)**

Based on the parties undisputed testimony, I find the landlord made reasonable efforts to re-rent the unit and she was not able to do so because of the negative information regarding the landlord posted by the tenant on the same virtual forums.

In accordance with section 67 of the Act, I find the tenant is responsible for the loss of rental income from May 01 to August 31, 2020. As such, I order the tenant to pay the landlord \$4,800.00 (\$1,200.00 x 4 months) for loss of rental income.

Tenant's claim for the return of the security deposit

Based on the parties undisputed testimony, I find the landlord received the tenant's forwarding address on May 05, 2020 and applied for dispute resolution on May 05, 2020, within the timeframe of Section 38(1)(d) of the Act.

As the landlord was successful in her application and is entitled to a compensation in an amount greater than the deposits, the tenant is not entitled to an order for the return of the deposits. Thus, I dismiss the tenant's application for the return of the security deposit.

Filing fee and set-off

As the landlord was successful in her application, I find that the landlord is entitled to recover the \$100.00 filing fee paid for her application.

The tenant must bear the cost of his filing fee, as the tenant was not successful in his application.

Residential Tenancy Branch Policy Guideline 17 states:

The Residential Tenancy Act provides that where an arbitrator orders a party to pay any monetary amount or to bear all or any part of the cost of the application fee, the monetary amount or cost awarded to a landlord may be deducted from the security deposit held by the landlord and the monetary amount or cost awarded to a tenant may be deducted from any rent due to the landlord.

As such, the landlord is authorized to retain the \$1,400.00 deposits to offset the monetary award for losses incurred due to the tenant's non-compliance with the Act.

In summary:

Loss of rental income (May 01 to August 31, 2020)	\$4,800.00
Filing fee	\$100.00
Subtotal	\$4,900.00
Minus deposits	-\$1,400.00

<b>Total monetary award to the landlord</b>	<b>\$3,500.00</b>
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For the purpose of educating the landlord, I note that under section 19(1) of the Act, a landlord is not permitted to accept either a security deposit or a pet damage deposit that is greater than the equivalent of 1/2 of one month's rent payable under the tenancy agreement, thus the value of the security deposit accepted by the landlord was unlawful. Furthermore, the landlord can not accept a deposit for the fobs of the rental unit.

### Conclusion

Pursuant to section 38 of the Act, I authorize the landlord to retain the tenant's deposits of \$1,400.00 in partial satisfaction of losses incurred. Pursuant to sections 67 and 72 I grant the landlord a monetary order in the amount of **\$3,500**.

The landlord is provided with this order in the above terms and the tenant must be served with this order as soon as possible. Should the tenant fail to comply with this order, this order may be filed in the Small Claims Division of the Provincial 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 *Residential Tenancy Act*.

Dated: September 14, 2020

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Residential Tenancy Branch