



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNETC, MNSD, FFT

### Introduction

The tenant filed an Application for Dispute Resolution (the “Application”) on January 3, 2021 seeking an order for compensation for monetary loss or other money owed, a return of the security deposit, and a return of the Application filing fee.

The tenant notified the landlord of this hearing. Additionally, they notified a third party whom they identified as the agent of the landlord. As proof they provided this notice and sent their prepared evidence to each party, they provided receipts and Canada post tracking numbers as evidence. Each of these parties in the hearing confirmed their receipt of the same.

The matter proceeded by way of a hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the “Act”) on May 10, 2021. Both parties attended the scheduled conference call hearing. I explained the process and both parties had the opportunity to ask questions and present oral testimony during the hearing.

At the outset of the hearing, the landlord confirmed they did not provide documentary evidence in advance. The agent for the landlord who attended the hearing presented material in the hearing from which they read directly; however, they did not provide this as evidence in advance. Both parties had the chance to present oral testimony in the hearing, the practice set out in Rule 7.3 of the *Residential Tenancy Rules of Procedure*.

### Issue(s) to be Decided

Is the tenant entitled to a monetary order for damage or other compensation pursuant to s. 67 of the *Act*?

Is the tenant entitled to a return of the security deposit pursuant to s. 38 of the *Act*?

Is the tenant entitled to recover the filing fee for this Application pursuant to s. 72 of the *Act*?

### Background and Evidence

The tenant presented a copy of the tenancy agreement. This shows a tenancy start date of December 10, 2020, for a six-month term ending on June 9, 2021. The rent amount provided is \$1,150 payable on the first day of each month. The security deposit amount filled in is \$575, and this shows the amount was to be paid by November 24, 2020. The agreement bears the landlord's own signature, as well as that of the tenant on the same date, November 24, 2020.

The landlord stated in the hearing that they merely signed a blank agreement, and provided that to an agent who was handling their affairs in securing a new tenant. According to the landlord, this agent brought this tenant to visit the rental unit and they called the landlord to say the tenant was happy with the unit and wished to rent. The agent went back to the landlord to state they would handle the matter, and that is when the agent presented a blank agreement for the landlord to sign.

The tenant here presented they did not pay a security deposit amount of \$575 and did not pay any rent to either the agent or the landlord. On November 24, they paid \$100 to the agent, as acceptance for the application, referring to this as "token money". The agent presented to the tenant that this was a measure to secure the tenancy in advance, and that the tenant would be able to later deduct this "token money" from the initial security deposit.

An email from the agent to the tenant shows the acceptance and the message "you have been approved" to rent the unit. That same day, the tenant requested a copy of the agreement to assist with the enrollment of their child in a new school. In the hearing, the tenant presented that the move-in date was set for December 10. They were told that since there was a monetary exchange (i.e., the token money), this was a tenancy agreement. By the end of November, they had no communication from the agent, and on December 3, the agent called to the tenant to inform them the landlord would not rent. At this time, the tenant asked the agent for help, and the agent promised to find something new with no success.

The tenant presented the December 3 email from the agent who asked for the tenants mailing address in order to forward a refund of the \$100 “token money”. In the response to the agent, the tenant stated the annulled tenancy caused “severe inconvenience and physical and emotional discomfort for me & my family along with financial damages”.

In the hearing, the landlord maintained they signed the blank tenancy agreement, and then did not know what was happening after this. They stated they were trying call the agent, with no response, and there was uncertainty after this matter was taking so long. They presented that they did not communicate directly with the tenant and did not have tenant contact information.

The agent for the landlord who attended the hearing provided testimony in the form of their direct reference to documents they have. The agent who spoke to this matter on the call reiterated that they were not the individual agent who dealt with matters at the time, and they were providing testimony based on the documentation their agency still holds.

They presented that the agent emailed a copy of the tenancy agreement to both parties on November 25. After this, the agent had a discussion with the landlord about the form of rental payment. The following day on November 26, the landlord mentioned that they did not want to work with the agent anymore. Further, the landlord did not agree with the agent’s fees. They had accepted \$100 from the tenant, i.e., the “token fee”, but did not return this to the tenant and then took this money as their fee from the landlord. They were attempting to transfer this \$100 directly back to the owner, who could then relay that to the tenant here directly. The agent in the hearing reiterated that they attempted communication with the landlord throughout; however, this came to naught.

In response to this in the hearing, the landlord maintained they only signed a blank tenancy agreement and heard nothing back. They wanted a signed contract back from the agent directly, as opposed to email.

The tenant here claims \$1,150, which is the first month’s rent. The tenant did not pay this money directly as per the agreement. In their Application, they stated this is “one month’s rent as compensation under [Residential Tenancy Branch Policy Guideline 50]”, that which provides guidance on Compensation for Ending a Tenancy. Additionally, they apply for recompense of the \$100 token money.

## Analysis

I refer to the *Act* in order to determine each party's rights and obligations in the dispute. The *Act* s 1 gives pertinent definitions:

“tenancy agreement” means an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a rental unit, use of common areas and services and facilities, and includes a licence to occupy a rental unit;

“tenant” includes

- (a) the estate of a deceased tenant, and
- (b) when the context requires, a former or prospective tenant.

A tenancy agreement confers rights and obligations, by s. 16:

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.

A landlord has the ability to end a tenancy, as set out in the *Act*. A notice to end a tenancy must be in a certain format and abide by strict time guidelines. These are as set out in the *Residential Tenancy Branch Policy Guideline 50* which the tenant referred to.

More broadly, to be successful in a claim for monetary compensation for loss the tenant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss; **and**
4. Steps taken, if any, to mitigate the damage or loss.

I note that for the purposes of this claim, the tenant must provide sufficient evidence to establish any alleged loss stems from an existing tenancy.

I find the evidence shows the Tenant did not pay a security deposit. Although the tenant framed their Application for this claim in terms of a security deposit, I find this is because the agent told the tenant this amount of token money would be deducted from the security deposit when that next step arrived. This was not a payment made as a

security deposit; however, I find it does constitute a form of consideration, with this tenancy agreement being a contract.

I find there was a tenancy agreement in place between the parties. While the *Act* provides for a prospective tenant as fitting the definition, I find the agreement here was completed between the parties, and this created the actual landlord-tenant relationship. This is bolstered by the agreement showing a clear term of 6 months, and the specific amount of rent – each are separate components of a promise, which the foundation of a landlord-tenant contract.

The landlord provided testimony they signed the agreement in advance and left it to an agent for completion with the tenant; however, this does not abrogate the responsibility of the landlord set out in the agreement and the *Act*. By having the agreement emailed to them on November 24, the landlord was aware of the agreement they had with the parties.

With reference to s. 16, I find the agreement conferred rights and obligations. Along with this comes the duty to give a proper notice to end the tenancy. There is no evidence the landlord provided notice to the tenant in proper fashion as established in the *Act*. Also, there was an opportunity to have a mutual agreement to end the tenancy. The agent in attendance provided affirmed testimony that the landlord did not respond to communication and made their intention clear that they were dissatisfied with the finer details of the agreement. I give weight to the agent's evidence that they tried to work with the landlord, with no response from the landlord.

Because of this, the tenant suffered a significant damage in having to find a new living arrangement, with no communication on what was happening regarding the imminent start to the tenancy. With regard to the four points set out above, I find from this that a loss to the tenant exists, and it was from the landlord's violation of the *Act*.

I find the tenant has established the amount of loss. This is the initial \$100 they paid as "token money" that was never returned. Additionally, I award one month's rent amount, as claimed by the tenant, for the landlord's violation of the *Act*. This is remuneration for the tenant's loss of having to secure another living arrangement elsewhere, despite the promise made which the landlord did not honour. I also find by limiting the claimed amount in this fashion, I find the tenant has mitigated their loss.

Because I find the tenant has satisfactorily established the four criteria listed above, I award the tenant the amount of \$1,250 as recompense for their loss.

As the tenant is successful in this application for compensation, I find that the tenant is entitled to recover the \$100 filing fee.

### Conclusion

Pursuant to sections 67 and 72 of the *Act*, I grant the tenant a Monetary Order in the amount of \$1,350 for monetary loss. The tenant is provided with this Order in the above terms and the tenant must serve the landlord 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 s. 9.1(1) of the *Act*.

Dated: May 10, 2021

---

Residential Tenancy Branch