



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Dispute Codes:**

MNDCL-S, FFL,

### **Introduction**

This hearing was convened in response to an Application for Dispute Resolution filed by the Landlord, in which the Landlord applied for a monetary Order for money owed or compensation for damage or loss, to keep all or part of the security deposit and pet damage deposit, and to recover the fee for filing an Application for Dispute Resolution. It is clear from information on the Application for Dispute Resolution that the Landlord is seeking compensation for lost revenue.

Residential Tenancy Branch Records show that on June 17, 2022 a Residential Tenancy Branch Adjudicator provided the Landlord with authority to serve hearing documents to the Tenant via email.

The Landlord stated that on June 20, 2022 the Dispute Resolution Package and evidence submitted to the Residential Tenancy Branch in June of 2022 was sent to the Tenant, via email. The Landlord submitted documentation that corroborates this statement. In the absence of evidence to the contrary, I find that these documents have been served in accordance with section 89(1)(e) of the *Residential Tenancy Act (Act)*, however the Tenant did not appear at the hearing. As the documents were properly served to the Tenant, the evidence was accepted as evidence for these proceedings and the hearing proceed in the absence of the Tenant.

The Landlord was given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. The Landlord affirmed that he would speak the truth, the whole truth, and nothing but the truth during these proceedings.

The Landlord was advised that the Residential Tenancy Branch Rules of Procedure prohibit private recording of these proceedings. He affirmed that he would not record any portion of these proceedings.

### Issue(s) to be Decided

Is the Landlord entitled to keep the pet damage deposit and/or security deposit?

### Background and Evidence

The Landlord stated that:

- On May 22, 2022 he and the Tenant entered into a verbal tenancy agreement;
- The tenancy was to begin on June 01, 2022;
- The Tenant agreed to pay monthly rent of \$650 by the first day of each month;
- The Tenant did not pay rent;
- The Tenant paid a security deposit of \$325.00 and a pet damage deposit of \$325.00;
- The same day the Tenant paid the deposits, the Tenant told the Landlord the Tenant was not moving into the unit;
- The Tenant did not move into unit;
- He was able to re-rent the unit to a third party, effective June 01, 2022, for monthly rent of \$650.00;
- He did not suffer any lost income as a result of the Tenant not moving into the unit;
- The Tenant did not give him written authority to retain any portion of the security/pet damage deposit;
- He has not returned the security/pet damage deposit; and
- The Tenant has not provided him with a forwarding address, in writing.

### Analysis

On the basis of the undisputed evidence, I find that;

- the Landlord and the Tenant entered into an oral tenancy agreement;
- the Tenant agreed to pay monthly rent of \$650.00 by the first day of each month
- the tenancy was to begin on June 01, 2022;
- on May 22, 2022 the Tenant told the Landlord she would not be moving into the unit; and
- the Tenant did not move into the rental unit.

As the Tenant essentially abandoned the rental unit, I find that this tenancy ended on June 01, 2022, pursuant to section 44(1)(d) of the *Residential Tenancy Act (Act)*.

Section 45(1) of the *Act* allows a tenant to end a tenancy by giving the landlord notice to end the tenancy effective on a date that is not earlier than one month after the date the landlord receives the notice and is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

The earliest the Tenant could have ended this tenancy, in accordance with section 4(1) of the *Act*, would have been June 30, 2022, providing written notice to end the tenancy was provided prior to June 01, 2022.

I find that the Tenant breached section 45(1) of the *Act* when she ended the tenancy without giving the Landlord proper written notice, as is required by section 45(1) of the *Act*.

Section 67 of the *Act* authorizes me to grant compensation to a landlord if the landlord suffers a loss as a result of the tenant not complying with the *Act* and/or tenancy agreement.

Although I am satisfied that the Tenant did not comply with section 45(1) of the *Act*, the evidence before me is that the Landlord did not suffer a financial loss as a result of that breach. Rather, the Landlord was able to re-rent the unit to a third party and the Landlord received the same amount of rental income that he would have received if the Tenant had moved into the unit. As the Landlord has not established that he suffered a loss as a result of the Tenant not moving into the unit, I cannot conclude that is entitled to compensation from the Tenant.

As the Landlord has failed to establish that he is entitled to compensation from the Tenant as a result of the Tenant not moving into the unit, I dismiss the Landlord's application to retain any portion of the security deposit and/or pet damage deposit.

Section 38(1) stipulates that, except as provided in subsection (3) or (4)(a), within 15 days after the later of the date the tenancy ends, and the date the landlord receives the tenant's forwarding address in writing, the landlord must either repay any security

deposit or pet damage deposit to the tenant or make an application for dispute resolution claiming against the security deposit or pet damage deposit.

The parties are hereby advised that the Landlord must comply with section 38(1) of the Act once he receives a forwarding address for the Tenant, in writing, providing he receives that address prior to June 01, 2023.

I find that the Landlord has failed to establish the merit of the Application for Dispute Resolution and I dismiss his application to recover the fee for filing this Application for Dispute Resolution.

### Conclusion

The Application for Dispute Resolution is dismissed. The Landlord retains the right to file another application to retain the security/deposit for anything other than compensation related to the Tenant's failure to give proper notice to end the tenancy.

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: December 15, 2022

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Residential Tenancy Branch