



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Ministry of Housing

## **DECISION**

### Dispute Codes

Landlord: MNDCL-S, FFL  
Tenant: MNSDS-DR, FFT

### Introduction

The Landlord filed an Application for Dispute Resolution on January 14, 2023 seeking compensation for money owed. Additionally, they seek reimbursement of the Application filing fee.

On January 23, 2023 the Tenant applied for the return of the security deposit they paid to the Landlord at the start of the tenancy, and the filing fee.

The matter proceeded by way of a hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the "Act") on May 29, 2023. Both parties attended the teleconference hearing. At the outset, each party confirmed they received the Notice of Dispute Resolution Proceeding and prepared documentary evidence from the other; on this basis the hearing proceeded at the scheduled time.

### Issues to be Decided

Is the Landlord entitled to compensation for the rent amounts and/or other money owed, pursuant to s. 67 of the *Act*?

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

Is the Tenant entitled to return of their security deposit, pursuant to s. 38 of the *Act*?

Is the Tenant entitled to reimbursement of the Application filing fee?

### Background and Evidence

The Landlord and Tenant each provided a copy of the tenancy agreement and both parties agreed on the terms therein in the hearing. The parties signed the agreement on October 20, 2022 for the tenancy starting on November 1, 2022, with the fixed term ending on October 30, 2023. The monthly rent amount was \$2,400. The Tenant paid a security deposit amount of \$1,200.

The agreement contains the provision addressing an early end of the tenancy:

If this is a fixed term tenancy and the agreement does not require the tenant to vacate at the end of the tenancy, the agreement is renewed as a monthly tenancy on the same terms until the tenant gives notice to end a tenancy as required under the *Residential Tenancy Act*.

The Tenant stated their need to end the tenancy because of the ill-effects on their child's health. The Landlord was not aware of this until they received the Tenant's "Leaving Notice" (as shown in the Tenant's evidence) dated November 30, 2022. The Tenant specified the final date of the tenancy to be January 1, 2023. At that time, the Tenant provided their forwarding address to the Landlord.

The Tenant moved out from the rental unit on December 31, 2022.

The Landlord presented that they could not find new tenants for January 1, 2023, with that time of year being difficult. They had new tenants for February 1, 2023. as stated in the hearing. The Landlord claims for the Tenant's January 2023 rent, for the amount of \$2,400.

The Landlord also claims for an "agent's fee", for a "tenant replacement", for \$1,360. The Landlord provided two copies of an October 27, 2022 invoice to their agent showing the amount of \$1,260. The agent who attended the hearing with the Landlord stated this was a standard fee, normally one half of a rent amount plus GST.

On their Application, the Landlord also applied for \$27.18, being the amount they paid for registered mail for information in this hearing.

The Tenant described multiple showings for new tenants in the rental unit, sometimes 5 or 6 showings per day. They presented this to show they were being flexible at the end of the tenancy, just wanting to end the tenancy because of their child's health.

### Analysis

The *Act* s. 45(2) covers how a tenant may end a fixed-term tenancy. It provides that a date shall not be earlier than one month after a landlord receives such notice, and not earlier than the end-of-tenancy date in the agreement.

I find as fact that the tenancy here was of a fixed-term duration. Here, the Landlord received a notice from the Tenant; however, the Tenant sought to end the tenancy earlier than the end-of-tenancy date in the agreement. Legally speaking, the Tenant is obligated to fulfill the tenancy agreement through to the end of its term.

I find the tenancy agreement in place between the parties conferred rights and obligations. This includes the duty to give a proper notice to end the tenancy. There is no evidence the Tenant have proper notice to the Landlord within the timelines set by the *Act*. Because of this, the Landlord suffered a loss without a tenant in place for the following month of January. This was, essentially, because of the Tenant's breach of the *Act*, with short-term notice going to the Landlord about ending the tenancy.

I find as fact that the Landlord had new tenants in place in the rental unit for February 1, 2023 onwards. I find the Tenant confirmed that the Landlord made the effort to have showings in the rental unit, so the Landlord diligently minimized the loss of rental income in this way.

I grant the Landlord a rent replacement for the month of January 2023. This is the equivalent of one single month of rent at \$2,400.

The Landlord also claimed an agent's fee. I find the Landlord did not present evidence this was an amount they actually paid. The evidence they submitted – twice uploaded to the Residential Tenancy Branch – was an invoice dated October 27, 2022 for the amount of \$1,260. This does not match the timeframe involved with this Tenant ending the tenancy at the end of 2022. On this basis, I am not satisfied that the Landlord paid the amount of \$1,360 to the agent as they are claiming, and that amount would not represent one-half of the rent amount as they stated in the hearing. I grant no compensation for this to the Landlord.

The *Act* does not provide for recovery of other costs associated with serving hearing documents; therefore, the cost of registered mail is not recoverable.

In sum, I find the Landlord experienced a monetary loss as a result of the Tenant's breach. I find the Landlord is entitled to the amount of \$2,400.

Because they were successful in their claim, I grant the Landlord reimbursement of \$100 of the Application filing fee. The sum total of the award to the Landlord is \$2,500.

The *Act* s. 72(2) gives an arbitrator the authority to make a deduction from any deposit held by a landlord. The Landlord has established a claim of \$2,500. After setting off the security deposit amount of \$1,200, there is a balance of \$1,300. I am authorizing the Landlord to keep the security deposit amount and award the balance of \$1,300.

There is no return of the security deposit to the Tenant. The Tenant was not successful in this Application; therefore, I grant no reimbursement of the Application filing fee to them.

Conclusion

Pursuant to s. 67 and 72 of the Act, I grant the Landlord a Monetary Order in the amount of \$1,300. I provide the Landlord with this Order, and they must serve this Order to the Tenant as soon as possible. Should the Tenant fail to comply with this Order, the Landlord may file this Order with the Small Claims Division of the Provincial Court where it will be 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 30, 2023

---

Residential Tenancy Branch