



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding POWELL STREET HOLDINGS  
LTD and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNDCL-S, FFL

### Introduction

This hearing was scheduled to convene at 1:30 p.m. on June 6, 2023 concerning an application made by the landlord seeking a monetary order for money owed or compensation for damage or loss under the *Residential Tenancy Act*, regulation or tenancy agreement; an order permitting the landlord to keep all or part of the pet damage deposit or security deposit; and to recover the filing fee from the tenant for the cost of the application.

An agent for the landlord attended the hearing and gave affirmed testimony. However, the line remained open while the telephone system was monitored for 10 minutes prior to hearing any testimony and no one for the tenant joined the call.

The landlord's agent advised that the tenant was served with the Notice of Dispute Resolution Proceeding and all of the landlord's evidence by registered mail on October 12, 2022 and orally provided the tracking number. I accept that testimony, and I find that the tenant has been served in accordance with the *Residential Tenancy Act*.

No evidence has been provided by the tenant, and all evidence of the landlord has been reviewed and is considered in this Decision.

### Issue(s) to be Decided

- Has the landlord established a monetary claim as against the tenant?
- Should the landlord be permitted to keep the security deposit in full or partial satisfaction of the claim?

### Background and Evidence

The landlord's agent testified that this fixed-term tenancy began on December 1, 2021 and was to revert to a month-to-month tenancy after November 30, 2022. However, on August 3, 2022 the tenant gave notice to the landlord by email that the tenant would be vacating at the end of August, 2022, and vacated on August 31, 2022. A copy of the tenant's email has been provided for this hearing.

Rent in the amount of \$900.00 was payable on the 1<sup>st</sup> day of each month and there are no rental arrears to the end of August, 2022. At the outset of the tenancy the landlord collected a security deposit from the tenant in the amount of \$450.00, which is still held in trust by the landlord, and no pet damage deposit was collected.

A copy of the tenancy agreement has been provided for this hearing which contains an Addendum with 30 additional terms. Term 4 states: "The full security deposit will be forfeited for breaking the lease." The landlord claims the \$450.00 security deposit.

The rental unit was advertised for rent when the tenant gave notice to vacate in August, 2022, but copies have not been provided for this hearing. The landlord's agent testified that the advertisement specified that the rental unit was available for September 1, 2022 for \$950.00. It was re-rented for October 1, 2022.

The landlord conducted a move-in condition inspection report with the tenant and a copy has been provided for this hearing. The landlord also completed a move-out condition inspection report but the tenant didn't remain in attendance, gave the key and left the tenant's forwarding address on the report. A copy has been provided for this hearing which is dated August 31, 2022. The tenant did not agree that the landlord keep the security deposit.

The landlord has provided a Monetary Order Worksheet setting out a claim of \$450.00, citing "Tenancy Agreement/Addendum, End of Tenancy Notice, Move out Inspection."

### Analysis

Firstly, the *Residential Tenancy Act* prohibits a landlord from indicating in a tenancy agreement that the security deposit will be withheld for any reason, particularly Section 20 (e):

#### **Landlord prohibitions respecting deposits**

**20** A landlord must not do any of the following:

- (a) require a security deposit at any time other than when the landlord and tenant enter into the tenancy agreement;
- (b) require or accept more than one security deposit in respect of a tenancy agreement;
- (c) require a pet damage deposit at any time other than
  - (i) when the landlord and tenant enter into the tenancy agreement, or
  - (ii) if the tenant acquires a pet during the term of a tenancy agreement, when the landlord agrees that the tenant may keep the pet on the residential property;
- (d) require or accept more than one pet damage deposit in respect of a tenancy agreement, irrespective of the number of pets the landlord agrees the tenant may keep on the residential property;
- (e) require, or include as a term of a tenancy agreement, that the landlord automatically keeps all or part of the security deposit or the pet damage deposit at the end of the tenancy agreement.

In this case, the landlord simply seeks to keep the security deposit because the tenancy agreement specifies that if the tenant vacates prior to the end of the fixed-term, the tenant forfeits the security deposit. However, a landlord may apply to keep a security deposit if the landlord has a claim against the tenant. In this case, the landlord has applied for a monetary order for money owed or compensation for damage or loss under the *Residential Tenancy Act*, regulation or tenancy agreement.

In order to be successful in a claim for damage or loss, the onus is on the landlord to satisfy the 4-part test:

1. that the landlord suffered damages or a loss;
2. that the landlord suffered those damages or loss as a result of the tenant's failure to comply with the tenancy agreement or the law;
3. the amount of such damage or loss; and
4. what efforts the landlord made to mitigate any damage or loss suffered.

I accept the evidence that the tenant ended the tenancy, with little notice to the landlord and prior to the end of the fixed term, and that satisfies element 2.

The landlord's agent testified that the rental unit was re-rented October 1, 2022 so the landlord suffered a rental revenue loss for the month of September, 2022. I accept that testimony, which in my view satisfies element 1 in the test for damages.

The landlord has not provided any evidence to establish when the rental unit was advertised, however the landlord's agent testified that it was soon after the tenant gave notice to vacate, and that the advertisement specified that the rental unit was available for September 1, 2022 for rent in the amount of \$950.00. By advertising for a larger amount of rent than the tenant had been paying is not mitigation. Considering there is no other evidence to support the testimony or that an error exists in the testimony of the landlord's agent, I am not satisfied that the landlord has established mitigation, or the amount of the loss.

The landlord has not made a claim for unpaid rent, but only to keep the security deposit due to an unenforceable term in the Addendum to the tenancy agreement.

The landlord's agent testified that the tenant moved out on August 31, 2022 and provided a forwarding address, which appears in the move-out condition inspection report provided for this hearing dated August 31, 2022.

I find that the landlord has not established a reason permitted under the *Residential Tenancy Act* to keep the security deposit, and I dismiss the landlord's application without leave to reapply. Since the landlord has not been successful with the application, the landlord is not entitled to recovery of the filing fee.

### Conclusion

For the reasons set out above, the landlord's application is hereby dismissed in its entirety without leave to reapply.

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: June 06, 2023

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Residential Tenancy Branch