



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MND, MNR, MNDC, MNSD, FF

### Introduction

This conference call hearing was convened in response to two applications for dispute resolution as follows:

By the tenant: as an application for the return of double the amount of the security deposit; and to recover the filing fee associated with this application.

By the landlord: as an application for a Monetary Order for damage to the unit; for money owed or compensation for damage or loss under the Act, Regulation or tenancy agreement; for unpaid rent; and to recover the filing fee associated with his application.

Both parties attended the hearing and provided affirmed testimony. They were given a full opportunity to be heard, to present evidence and to make submissions.

### Issue(s) to be Decided

Is the tenant entitled to the return of the security deposit as claimed?

Is the tenant entitled to recover the filing fee?

Is the landlord entitled to a Monetary Order, and if so for what amount?

Is the landlord entitled to keep all or part of the security deposit?

Is the landlord entitled to recover the filing fee?

### Background and Evidence

The rental unit consists of the lower level of a single detached home. Pursuant to a written agreement, the fixed term tenancy was based on a one year lease, starting on October 1<sup>st</sup>, 2010 and ending September 30<sup>th</sup>, 2011, at a monthly rate of \$1300.00 payable on the first of each month. The tenant paid a security deposit of \$600.00 and was responsible for 40% of the utilities. Condition inspection reports were not completed at the start or the end of the tenancy.

In his documentary evidence, the landlord produced a copy of a notice to end tenancy from the tenant dated March 9<sup>th</sup>, 2010, with an effective date of April 30<sup>th</sup>, 2011. In that same notice, the tenant states that if the landlord cannot find a new tenant by the end of April 2011, the tenant will continue to pay the rent until the end of the lease contract. The landlord provided a copy of the notice of the tenant's forwarding address, which the landlord states he received on June 1<sup>st</sup>, 2011.

The landlord testified that the rental unit was re-rented on May 1<sup>st</sup>, 2011 at a reduced rate of \$1250.00 per month and claims the loss of rental income of \$50.00 per month for 5 months. The landlord said that he used a leasing agent to find new agents and is charging the tenant the agent's fee of \$260.42. The landlord also provided copies of utility invoices and of an invoice to repair a fan.

The landlord filed a monetary claim as follows:

- Loss of rental income (\$50.00 x 5mths):	\$ 250.00
- Lease agent's fee:	\$ 260.42
- Replace bathroom fan:	\$ 145.60
- Unpaid hydro:	\$ 43.49
- Sub-total:	\$ 699.91
- Less \$600.00 security deposit:	\$ 600.00
- Balance owing to the landlord:	\$ 99.91

The landlord stated that he originally calculated deductions for loss at the end of the tenancy, and that at that time he found that he owed the tenant \$45.99. The landlord provided a copy of the cheque dated May 31<sup>st</sup>, 2011 that he paid the tenant for that amount after keeping the security deposit.

The tenant testified that he did not intend to sign a fixed term agreement but that he nevertheless signed it due to language barriers. He stated that if the landlord would have told him that he would be charged the cost of finding new tenants, he would have found new tenants himself. He also stated that he did not agree that he would pay the difference of the reduced rent for the remainder of the fixed term. Concerning hydro, he said that he told the landlord's daughter, who acted as an agent, that he paid the full invoice for March in order to be removed and not have to pay for April; he said that the landlord's daughter agreed to that arrangement. Concerning the broken bathroom fan, the tenant said that no inspection reports were completed in spite of his request, and that the fan was already broken at the start of the tenancy.

### Analysis

Section 38(1) of the *Residential Tenancy Act* provides that the landlord must return the security deposit or apply for dispute resolution within 15 days after the later of the end of the tenancy and the date the landlord received the tenant's forwarding address in writing.

Section 38(6) of the *Residential Tenancy Act* provides in part that if a landlord does not comply with his statutory obligation to return the security deposit within 15 days, the landlord must pay the tenant double the amount of the deposit.

In this matter the landlord received the tenants' forwarding address, but the security deposit was not returned and the landlord did not apply for dispute resolution as

required by statute. Therefore the tenants are entitled to the return of double the amount of the security deposit.

In this case the landlord retained an amount from the security deposit without the tenant's written agreement. The landlord was not entitled to do this. The landlord stated that he received the tenant's forwarding address in writing on June 1<sup>st</sup>, 2011. Therefore the landlord had to either return the deposit or make an application for dispute resolution by no later than June 16<sup>th</sup>, 2011. The landlord did not file his application until August 3<sup>rd</sup>, 2011. Accordingly the tenant is entitled to the return of double the amount of the security deposit for \$1200.00.

Turning to the landlord's claim: before a Dispute Resolution Officer can make an order under section 67 of the *Residential Tenancy Act*, the applicant must first prove the existence of damage or loss; that it stemmed from the other party's violation of the Act, regulation, or tenancy agreement; that the monetary amount of the claim was verified; and that the applicant took steps to mitigate or minimize the loss or damage. When these requirements are not satisfied, and particularly when the parties' testimonies are at odds, in the absence of other substantive independent evidence the burden of proof is not met. In this matter that burden was on the landlord to prove his claim against the tenant. Concerning the broken fan, in the absence of evidence as noted above I dismiss this aspect of the landlord's claim.

Section 45(2) of the *Residential Tenancy Act* states in part that a tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that is not earlier than the date specified in the tenancy agreement as the end of the tenancy.

The tenancy agreement is a contract of adhesion drawn by the landlord. If the tenant wished to rent from the landlord under any other terms than those specified in the agreement, he ought not to have signed the agreement. Once signed, the tenant is obliged to accept the terms of the agreement without modification. I find that the tenant breached the fixed term agreement and left prematurely.

Conclusion

TEXT

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: October 20, 2011.

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Residential Tenancy Branch