



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **Decision**

**Dispute Codes:** MNDC, MNSD, FF

### **Introduction**

This hearing dealt with an Application for Dispute Resolution by the landlord for a monetary order for loss of rent as well as an order to retain the security deposit in satisfaction of the claim.

Both parties appeared and gave testimony.

### **Issue(s) to be Decided**

The issues to be determined based on the testimony and the evidence is whether or not the landlord is entitled to monetary compensation for loss of rent.

### **Background and Evidence**

The landlord testified that the tenancy agreement was signed on October 6, 2011 by the tenant for a fixed term tenancy that was to begin on November 1, 2011. The rent was \$2,500.00 and a security deposit of \$1,250.00 was paid. The landlord testified that the tenant intended to use the rental unit as a day care and that the addendum of the agreement signed by the tenant specifically provided that all responsibilities for the daycare premises would be the tenant's not the landlord's obligation. A copy of the tenancy agreement was in evidence. The landlord testified that the tenant made some requests for improvements to the property and the landlord was willing to provide these.

However, the landlord received a further request from the tenants for repairs to the driveway. On October 13, 2011, the landlord responded to the tenant by email stating that this request could not be granted. A copy of this communication was in evidence and contained the statement, "*If you really want us to do it, the fact is that we cannot continue the contract, and we will return the deposit to you*" (reproduced as written).

The landlord testified that, although he tried to reach the tenant to discuss their intentions further, he did not hear from them until October 21, 2011, at which time it was confirmed that they were not going to take occupancy. The landlord testified that he immediately commenced re-rental efforts, but was not able to obtain a replacement tenant until November 15, 2011. The landlord made application for dispute resolution to

retain the tenant's security deposit to cover the half-month loss of rent caused by the tenant's failure to move into the unit pursuant to the contract.

The tenant testified that they required certain improvements to the unit to enable them to conduct their daycare business and had made the request for repairs to the landlord prior to the start of the tenancy. However, the landlord stated that he had to check with the owner before giving an answer and there was some delay in finding out the landlord's position. The tenant testified that, when it became evident that the landlord was not willing to fix the driveway, they were pleased with what they thought was the landlord's written proposal received on October 13, 2011, stating that the contract would be discontinued and the tenant's deposit would be refunded.

The tenant stated that, when they next contacted the landlord, they expected to make arrangements to receive their deposit back as promised in the landlord's mail of October 13, 2011. The tenant testified that they had gone to the added effort to prepare the written Mutual Agreement to End Tenancy, but were disappointed when the landlord declined to sign it. The tenant pointed out that the landlord had not given them any copy of their tenancy agreement after they had signed it, and when they finally received it on November 6, 2011, the agreement did not include any contact information for the landlord nor the landlord's service address.

The tenant's position is that the landlord already committed to returning their deposit and encouraged them to provide their forwarding address for this purpose. The tenant testified that the landlord never gave any indication otherwise until they suddenly got the application for dispute resolution in which the landlord was seeking to keep the deposit for loss of rent for November 2011. The tenant feels that the landlord should return the security deposit.

### **Analysis**

I find that the tenant signed a fixed-term tenancy agreement and was bound by this agreement under the Act. Although the tenant found some condition issues with the rental unit after they had already committed to the tenancy, that made their original intention unworkable, I find that this should have been dealt with before the contract was signed.

Section 7 of the Act states that if a landlord or tenant does not comply with the Act, the regulations or the tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results. Section 67 of the Act grants a dispute Resolution Officer the authority to determine the amount and to order payment under these circumstances.

In this case, the tenant did not honour the agreement by moving into the unit and occupying it in compliance with the contract. I acknowledge that the landlord did not agree to complete the repairs to the driveway being sought by the tenant after the agreement was signed. However, based on the tenancy agreement, I find that this refusal was not a violation of any terms in the contract, given the wording in the addendum signed by both parties.

Even if I did accept that the condition of the driveway was so deficient that it constituted a violation of section 32 of the Act, the tenant's remedy under the Act, would be to comply with the tenancy agreement by moving in and then proceed to make an application for dispute resolution to deal with the dispute over the driveway or other alleged deficiencies in the unit. The tenant would never be at liberty to rescind the contract without incurring any liability for losses incurred by the landlord as a result.

With respect to the landlord's offer to not continue the contract, I accept the landlord's position that this was a suggestion made on October 13, 2011, and that it would have required prompt confirmation from the tenant that they would not be moving in, particularly because of the short amount of time for the landlord to re-rent the unit, if the tenant decided not to continue the contract. I find that, although the tenant was not given a proper service address for the landlord, as required by the Act, the tenant did have contact information by email and telephone and should have been able to respond to the landlord's proposal without undue delay.

Based on the above facts I find that the tenant is responsible under the Act to reimburse the landlord for the loss of rent for the month of November 2011 in the amount of \$1,250.00 and the landlord is entitled to retain the security deposit of \$1,250.00 in full satisfaction of the claim.

### **Conclusion**

I hereby grant the Landlord an order to retain the tenant's security deposit in compensation for losses caused by the tenant's failure to complete the contract.

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: February 01, 2012.

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Residential Tenancy Branch