



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNR, MNDC, MNSD, FF

### Introduction

This hearing dealt with cross applications. The landlord is seeking a monetary order for unpaid rent and an order to retain the security deposit in partial satisfaction of the claim. The tenant is seeking an order to have doubled the security deposit returned. Both parties participated in the conference call hearing. Both parties gave affirmed evidence.

### Issue to be Decided

Is the either party entitled to a monetary order as claimed?

### Background & Evidence

Both parties agree to the following:

The tenancy began on August 31, 2012 and ended on May 15, 2013. The tenancy was to be for a fixed term ending on August 31, 2013. A move in and move out condition inspection was conducted by the parties. The tenants were obligated to pay \$775.00 per month in rent in advance and at the outset of the tenancy the tenants paid a \$380.00 security deposit.

The landlord gave the following testimony:

The landlord stated that the tenant breached their tenancy agreement by obtaining a pet. On April 14, 2013 the landlord issued a One Month Notice to End Tenancy for Cause with an effective date of May 14, 2013. The landlord stated that since the tenant did not comply with the agreement and that 3.5 months were remaining on the agreement; he should be entitled to liquidated damages. The landlord stated that he re-rented the unit for June 1, 2013.

The tenants' agent was fully instructed and provided the following on behalf of the tenant:

The tenants' agent stated that although the landlord complied with the Act in filing for dispute resolution within 15 days of the later, the tenancy ending or receiving the tenants forwarding address in writing; the application has no merit. The tenants' agent stated that although the effective date of the notice was incorrect and that the tenant had legal right to the unit until May 31, 2013, the tenant complied with the landlords Notice by moving out by the middle of May. The tenant's agent stated that the tenant did not agree to any deductions to her security deposit or any agreement relinquishing it to the landlord.

### Analysis

The tenants' agent stated that the liquidated damages claim on the landlords' application is not reflected anywhere on the signed tenancy agreement or subsequent correspondence between the parties. I agree with the tenants' agent submission. I find that the parties ended the tenancy by mutual agreement. The tenant was aware that she could have legally remained in the unit until May 31, 2013 but made every effort to accommodate the landlords request and leave early. In addition, the landlord failed to keep accurate and complete records and documentation. The claim for liquidated damages is without merit or basis. I accept that the landlord was operating as best he could and in good faith but in the landlords own testimony he stated on three separate occasions "this process is new to me and I'm not sure what I had to do". A landlord has a responsibility to inform the tenant at the outset of a tenancy the rights and obligations for both parties. I found the landlords presentation of his case disjointed and at times contradictory.

Residential Policy Guideline #17 clearly addresses the issue before me as follows:

### **RETURN OR RETENTION OF SECURITY DEPOSIT THROUGH ARBITRATION**

1. The arbitrator will order the return of a security deposit, or any balance remaining on the deposit, less any deductions permitted under the Act, on:
  - a landlord's application to retain all or part of the security deposit, or
  - a tenant's application for the return of the deposit unless the tenant's right to the return of the deposit has been extinguished under the Act. The arbitrator will order the return of the deposit or balance of the deposit, as applicable, whether or not the tenant has applied for arbitration for its return.
2. Where the tenant applies for return of the security deposit and the landlord later applies for arbitration for claims arising out of the tenancy and the arbitrations are

not scheduled at the same time, the arbitrator will order the return of the security deposit to the tenant and the landlord's claims will be heard whenever scheduled after that, unless the parties and the arbitrator agree to having the landlord's claim heard at the same time.

3. Unless the tenant has specifically waived the doubling of the deposit, either on an application for the return of the deposit or at the hearing, **the arbitrator will order the return of double the deposit:**
- If the landlord has not filed a claim against the deposit within 15 days of the later of the end of the tenancy or the date the tenant's forwarding address is received in writing;
  - If the landlord has claimed against the deposit for damage to the rental unit and the landlord's right to make such a claim has been extinguished under the Act;
  - **If the landlord has filed a claim against the deposit that is found to be frivolous or an abuse of the arbitration process;**
  - If the landlord has obtained the tenant's written agreement to deduct from the security deposit for damage to the rental unit after the landlord's right to obtain such agreement has been extinguished under the Act;
  - whether or not the landlord may have a valid monetary claim.

The landlord has failed to satisfy that their claim has any merit and I therefore dismiss their application in its entirety.

Based on all of the above I find that the tenant is entitled to the return of double the security deposit.

As for the monetary order, I find that the tenant has established a claim for \$760.00. I grant the tenant an order under section 67 for the balance due of \$760.00. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

### Conclusion

The landlords' application is dismissed.

The tenant is granted a monetary order of \$760.00.

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: August 26, 2013

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Residential Tenancy Branch