



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes

MNSD O

### Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* ("the Act") for authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, and to make submissions. Both parties confirmed receipt of the other's evidentiary submissions for this hearing.

### Issue to be Decided

Is the landlord entitled to retain all or a portion of the tenant's security deposit towards a monetary award?

### Background and Evidence

This tenancy began on May 21, 2014 as a four month fixed term tenancy. After the first four months, the tenancy continued on a month to month basis with a rental amount of \$1600.00 payable on the first of each month. Both parties agreed that the tenancy agreement was in written form and that a copy of the agreement was provided to the tenant. Neither party submitted the tenancy agreement for this hearing. Both parties agreed that no condition inspection was completed at the start or at the end of this tenancy. The landlord testified that she continues to hold a \$750.00 security deposit paid by the tenant at the outset of the tenancy.

The landlord claims that, during the course of the tenancy, the tenant sublet his rental unit without prior authorization of the landlord. The tenant denies this claim. The landlord submitted documentary evidence including an email from a manager at the residential premises to an agent of the landlord with the subject "new short term rental – suite 1408". That email stated, "please find attached, a copy of a compliant received regarding the short term rental company using suite 1408...the turn over is weekly... could you please contact the owner to inform them of the bylaw limiting rentals to no less than three month periods... ". The landlord also submitted two handwritten complaint forms from the strata corporation; one with an unclear date and reference to unit 1108 and one with a date of August 1, 2014 referencing 1408. Both refer to complaints related to a "short term rental".

The landlord testified that she was fined \$200.00 by the strata corporation for short term rental activity. She testified that she did not pay this fine on time and was then fined \$200.00 more for failing to pay the fine within the appropriate timeframe. She submitted that the tenant should pay her costs of \$400.00 and that she should be entitled to retain \$400.00 of the tenant's security deposit towards these costs. The landlord did not submit any documentary evidence that she was fined.

The tenant denied subletting his rental unit. He testified that he has a large family and a large network of friends. He testified that, on occasion when he was out of town, his girlfriend or another friend or family member would sometimes stay in his home. The tenant also provided undisputed sworn testimony that the parties had made a verbal agreement that he would leave certain furnishings in the rental unit, including blinds, and that the landlord would return his security deposit in a timely fashion.

The landlord submitted an advertisement for the rental unit. It referred vaguely to short term rentals. The landlord argued that this was evidence the tenant had rented out his unit. The tenant argued that there was no evidence he had posted the advertisement as it had no date or other detailed information.

### Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

The landlord bears the burden of proof in this matter. She claims that she was fined as a result of actions by the tenant. However, she has not provided sufficient evidence to support her testimony that she was fined \$200.00 and that she paid said fine. She did not submit any documentary evidence to reflect the issuance of a fine or any proof of payment by the landlord. The landlord provided no supporting documentary evidence of the fine. The evidence submitted by the landlord is an email that she needed to be informed of the strata corporation rules. The fine is not referenced in the documentary evidence submitted by the landlord for this hearing.

The landlord sought to recover an additional \$200.00 that she was fined as a penalty for failing to pay the original amount. Any penalty for failure to pay is the sole responsibility of the landlord and is not a responsibility of the tenant, regardless of any other culpability for the original fine amount.

I find the landlord has not provided sufficient evidence to support her claim that the tenant sublet his rental unit. The email submitted as evidence for this hearing is limited in details and suggests a mere allegation from a manager or strata corporation representative to be addressed by the landlord. The advertisement submitted as evidence by the landlord is not dated and does not provide sufficient evidence to show that the tenant placed the advertisement or that he sublet his rental unit.

I find that the landlord has not proven, on a balance of probabilities that the tenant sublet his rental unit and had no authorization to do so. Furthermore, I find that the landlord has provided insufficient proof that she has suffered a monetary loss as a result of any action by the tenant.

Based on a lack of sufficient evidence, I dismiss the landlord's claim to retain a portion of the tenant's security deposit. As the landlord is not entitled to retain the security deposit, the landlord is required by the provisions of the *Residential Tenancy Act* to return the tenant's security deposit as soon as practicable.

#### Conclusion

I dismiss the landlord's application to retain the tenant's security deposit.

I order that the landlord return the entirety of the \$750.00 security deposit to the tenant within 17 days of receiving this decision.

I order that the tenant provide the landlord with his current address within 2 days of receiving this decision.

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: April 25, 2016

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Residential Tenancy Branch