



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes:** FF 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; and
- authorization to recover the filing fee for this application, pursuant to section 72.

SR spoke on behalf of the landlord in this hearing, and had full authority to do so. Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

The tenant confirmed receipt of the landlord's dispute resolution application ('Application') and evidence. In accordance with sections 88 and 89 of the *Act*, I find that the tenant was duly served with the Application and evidence. The tenant did not submit any written evidence for this hearing.

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

Is the landlord entitled to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary award requested?

Is the landlord entitled to recover the filing fee for this application from the tenant pursuant to section 72 of the *Act*?

### **Background and Evidence**

The landlord testified regarding the following facts. This fixed-term tenancy began on May 1, 2016, and ended on April 30, 2017. Monthly rent was set at \$850.00, and the landlord collected a security deposit and pet damage deposit of \$425.00 each, which the landlord still holds. The tenant provided a forwarding address upon move-out, and the landlord filed an application to retain this deposit within 15 days of this date.

The tenant gave notice on April 1, 2017 that she was not renewing the tenancy, and planned on moving out on April 30, 2017. A copy of this written notice was included in the landlord's evidence, which the tenant does not dispute. The tenant testified in the hearing that she was unaware that one month notice was required before she gave notice to move out. A copy of the tenancy agreement was included in the landlord's evidence, which indicates that this fixed term tenancy was to end on April 30, 2017, and "at the end of this time the tenancy will continue on a month to month basis, or another fixed length of time, unless the tenant gives written notice to end the tenancy at least one clear month before the end of the term". The landlord is seeking 1 month's rent as compensation for the failure of the tenant to comply with section 45(2) of the *Act*.

The landlord testified in the hearing that after the tenant moved out, they did not make any efforts to re-rent the unit as there were other vacant units available for rent. The landlord re-rented the unit on June 1, 2017, at \$890.00 per month.

The landlord is also seeking \$100.00 in compensation for the carpet cleaning, which the tenant acknowledged was part of the tenancy agreement, as well as recovery of the filing fee for this application.

### **Analysis**

Section 45(2) deals with a Tenant's notice in the case of a fixed term tenancy:

**45 (2)** *A tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that*

*(a) is not earlier than one month after the date the landlord receives the notice,*

*(b) is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and*

*(c) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.*

The landlord provided undisputed evidence at this hearing that the tenant did not give one month notice to end this tenancy as required by section 45(2)(a) of the *Act*. I then must consider whether the landlord has sufficiently mitigated their damages. The landlord's agent testified in the hearing that no efforts were made to obtain a new tenant for May 1, 2017 as there were other vacant units available. I find that the landlord did provide sufficient evidence to support that they had suffered any financial loss due to the tenant's failure to comply with section 45(2)(a) of the *Act*. I am not satisfied that the landlord had made any effort to mitigate the tenant's exposure to the landlord's monetary loss of rent for May 2017, as is required by section 7(2) of the *Act*. I, therefore, dismiss the landlord's monetary claim for one month's rent.

As the tenant acknowledged that she owed \$100.00 for carpet cleaning, I find that the landlord is entitled to a monetary order of \$100.00.

As the landlord was partially successful in their application, I am allowing the landlord to recover half of the filing fee from the tenant.

The landlord continues to hold the tenant's security deposit and pet damage deposit of \$425.00 each. In accordance with the offsetting provisions of section 72 of the *Act*, I order the landlord to retain \$150.00 of the tenant's security and pet damage deposits in satisfaction of the monetary claim.

### **Conclusion**

The landlord's application for a monetary claim of 1 month's rent is dismissed.

I find that the landlord is entitled to \$100.00 for the carpet cleaning, and \$50.00 for the filing fee for this application. In accordance with the offsetting provisions of section 72 of the *Act*, I order the landlord to retain \$150.00 of the tenant's security and pet damage deposits in satisfaction of the monetary claim. The landlord is to return the remainder of the tenant's security and pet damage deposit to the tenant.

I issue a Monetary Order in the amount of \$700.00 in the tenant's favour. The tenant is provided with this Order in the above terms and the landlord must be served with a copy of this Order as soon as possible. Should the landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

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 19, 2017

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Residential Tenancy Branch