



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNSD, MNR, FF

### Introduction

The landlord and the tenant convened this hearing in response to applications.

The landlord's application is seeking orders as follows:

1. For a monetary order for unpaid rent;
2. For a monetary order for money owed;
3. To keep all or part of the security deposit; and
4. To recover the cost of filing the application.

The tenant's application is seeking orders as follows:

1. Return of double the security deposit; and
2. To recover the cost of filing the application.

Both parties appeared, gave affirmed testimony, and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

### Preliminary and Procedural matters

At the outset of the hearing the tenant raised the issue that the landlords' application was not filed in the correct name of the landlords. The landlord stated that YT is their legal name and they use the English name of BT. YT stated that both names are on the tenancy agreement.

In this case, I am satisfied the landlord's legal name is YT and their English named used is BT. I find it appropriate to list both names in the style of cause.

I have also amended the female landlord's name to show their English name that they use in the tenancy agreement.

On May 6, 2019, the parties attended a hearing which was scheduled by the tenant for the return of the security deposit. On May 8, 2019, the Arbitrator found that the tenant's application was filed premature, as the tenant had not provided their forwarding address prior to the hearing. The Arbitrator deemed the landlords were served with the tenants forwarding address when they received a copy of the May 8, 2019, Decision. I have noted the file number on the covering page of this Decision.

On May 22, 2019, the landlords' filed their application claiming against the security deposit as required by the Act. I find the tenant's application for double the security deposit must be dismissed as the landlords' application was file within the statutory time limit.

#### Issues to Decided

Are the landlords entitled to a monetary order for unpaid rent?

Are the landlords entitled to a monetary order for money owed?

Are the landlords entitled to retain the security deposit?

#### Background and Evidence

The parties entered in to a fixed term tenancy on November 14, 2018, which was to begin on December 1, 2018 and was to expire on November 30, 2021. Rent in the amount of \$950.00 was payable on the first of each month. The tenant paid a security deposit of \$475.00. The tenant did not move into the premises.

The landlord claims as follows:

a.	Unpaid of rent for December 2018	\$ 950.00
b.	Money owed, locks, and materials	\$ 550.00
c.	Filing fee	\$ 100.00
	<b>Total claimed</b>	<b>\$1,600.00</b>

The landlord testified that they entered into a legal contract with the tenant to rent the premises starting on December 1, 2018, and the keys were given to the tenant on November 14, 2018, when the security deposit was paid.

The landlord testified that on November 16, 2018, they received an email from the tenant terminating the tenancy. The landlord stated that they were unable to find a new renter for December as they had already informed any potential tenants that the premises was already rented. The landlord stated they should be entitled to recover loss of rent for December 2018.

The landlord testified that the keys to the gate were not returned and they had to replace the lock. The landlord seeks to recover the cost of the lock in the amount of \$300.00.

The landlord testified that the tenant asked the landlords to cover the exterior doorway with a cover. The landlord stated that they should be entitled to recover the cost as it was only done for the benefit of the tenant and then they did not move into the rental unit. The landlords seek to recover the cost of \$250.00.

The tenant testified that they entered into the tenancy agreement with the landlord. The tenant stated that the landlord asked to see their driver's license and the landlord took a photocopy. The tenant stated that this was a violation of their privacy.

The tenant testified that they also had to provide the landlord with an emergency contact phone number, which they provided. The tenant stated that the landlord contacted that number and it was not an emergency. The tenant stated that this was a violation of their privacy.

The tenant testified as a result they decided to terminate the tenancy on November 16, 2018, and did not move into the premises.

The tenant testified that they did not return the gate key as the landlord told them that they did not need it back, as it was only to the gate.

### Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

In a claim for damage or loss under the Act or tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities. In this case, the landlords have the burden of proof to prove their claim.

Section 7(1) of the Act states that if a landlord or tenant does not comply with the Act, regulation or tenancy agreement, the non-comply landlord or tenant must compensate the other for damage or loss that results.

Section 67 of the Act provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

### **Start of rights and obligations under tenancy agreement**

**16** The rights and obligations of a landlord and tenant under a tenancy agreement take effect from the date the tenancy agreement is entered into, whether or not the tenant ever occupies the rental unit.

### **Rules about payment and non-payment of rent**

**26** (1) *A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.*

...

### **Tenant's notice (fixed term)**

**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,*

...

In this case, the parties agreed that they entered into a fixed term tenancy on November 14, 2018. On November 16, 2018, the tenant terminated the tenancy agreement as

they alleged the landlord violated their privacy by taking a photocopy of their driver's license and phoning the emergency number listed in the tenancy agreement.

I do not find the actions of the landlord a violation of the Act, the landlord is entitled to look at identification and keep copies for their record. Further, the tenant listed two numbers in the tenancy agreement; neither number indicates it for emergency purposes only, and even if it had that would not be a violation of the Act. I find the tenant has failed to prove the landlord violated a material term of the tenancy agreement.

As I have found the landlord did not violate a material term of the tenancy, I find the tenant breached section 45(2) of the Act, when they ended the tenancy prior to the date stated in their tenancy agreement. I find the tenant is responsible to pay rent under the tenancy agreement as the landlord was unable to re-rent the premise for the month of December 2018. Therefore, I find the landlords are entitled to recover rent for December 2018, in the amount of **\$950.00**.

While I accept the tenant did not return the key to the gate and the landlords made have made a cover for the exterior door; however, I find the landlords have not provided sufficient evidence to support their claim, as the landlords have not proven they actually suffered a loss. The landlords did not provide any receipts to verify their claim. Therefore, I dismiss this portion of the landlords' claim

I find that the landlords have established a total monetary claim of **\$1,050.00** comprised of the above described amount and the \$100.00 fee paid for this application.

I order that the landlords retain the security deposit of **\$475.00** in partial satisfaction of the claim and I grant the landlords an order under section 67 of the Act for the balance due of **\$575.00**.

This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court. The **tenant is cautioned** that costs of such enforcement are recoverable from the tenant.

### Conclusion

The tenant's application for double the security deposit is dismissed.

The landlords are granted a monetary order and may keep the security deposit in partial satisfaction of the claim and the landlords are granted a formal order for the balance due.

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: September 18, 2019

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Residential Tenancy Branch