



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDC, MNSD, FFL

### Introduction

On November 6, 2019, the Landlord submitted an Application for Dispute Resolution under the *Residential Tenancy Act* (“the Act”) for money owed or compensation for damage or loss; to keep the security deposit; and to recover the cost of the filing fee.

The matter was set for a conference call hearing at 1:30 p.m. on this date. The Landlord’s agent (“the Landlord”) attended the teleconference hearing; however, the Tenant did not. The line remained open while the phone system was monitored for ten minutes and the Tenant did not call into the hearing during this time.

The Landlord testified that the Notice of Dispute Resolution Proceeding was served to the Tenant using registered mail sent on November 6, 2019. The Landlord testified that the notice of the hearing was sent to the dispute address. The Landlord testified that the Tenant moved out of the rental unit on November 30, 2019. The Landlord provided a copy of the registered mail receipt dated November 6, 2019.

I find that the Landlord served the Tenant with the Notice of Dispute Resolution Proceeding in accordance with sections 89 and 90 of the Act. The Notice is deemed received by the Tenant on November 11, 2019 the fifth day after it was mailed.

The Landlord was provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Issues to be Decided

- Is the Landlord entitled to money owed or compensation for damage or loss?
- Is the Landlord entitled to keep the security deposit towards the claim?
- Is the Landlord entitled to recover the cost of the filing fee?

### Background and Evidence

The Landlord testified that the tenancy began on August 1, 2019 as a one-year fixed term tenancy. Rent in the amount of \$2,280.00 was to be paid to the Landlord by the first day of each month. The Tenant paid the Landlord a security deposit of \$1,140.00. The Landlord testified that the tenancy agreement prohibits subletting the rental unit. The Landlord testified that the Tenant signed a form K document agreeing to comply with the building strata rules. The Landlord provided a copy of the tenancy agreement.

The Landlord is seeking compensation of \$8,000.00 due to strata fines levied against the Landlord due to the Tenant renting the unit on Airbnb.

The Landlord testified that the rental property caretaker contacted him and informed him that the Tenant was running an Airbnb. The Landlord sent the Tenant an email regarding the issue and the Tenant informed him that her guests were friends of hers.

The Landlord testified that the rental property caretaker contacted him again in September and provided proof that the Tenant was renting the unit on Airbnb. The care-taker spoke to the Airbnb tenants and provided the Landlord with a photograph of the Airbnb contract. The Landlord provided a photograph of the contract.

The Landlord again raised the issue with the Tenant and the Tenant agreed that she would end the tenancy if the Landlord returned the security deposit. The Landlord did not agree to return the deposit. The Tenant moved out at the end of November 2019.

The Landlord provided copies of documents the Landlord received from the building strata. The Landlord provided a copy of a letter dated October 30, 2019 where the strata levied the Landlord a fine of \$1,000.00 per night for a total fine amount of \$8,000.00.

The Landlord testified that they are waiting to recover compensation from the Tenant before the fine is paid to the strata.

The Landlord asks to keep the security deposit in the amount of \$1,140.00 in partial satisfaction of his claim.

### Analysis

Based on the evidence before me, the testimony of the Landlord, and on a balance of probabilities, I find that the Tenant entered into a tenancy agreement which prohibited subletting of the rental unit. I accept the Landlords testimony that the Tenant signed the form K agreeing to comply with strata building rules.

Section 7 of the Act provides that if a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

I find that the Tenant rented the unit out on Airbnb. I find that the Tenant did not comply with the tenancy agreement that prohibits subletting the rental unit. I find that the Tenant is responsible for the fines that the strata levied against the Landlord due to the Tenant's breach of the bylaws.

I award the Landlord the amount of \$8,000.00 for the strata fines.

I order that the Landlord can keep the security deposit in the amount of \$1,140.00 in partial satisfaction of the Landlords award of \$8,000.00.

Section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. I order the Tenant to repay the \$100.00 fee that the Landlord paid to make application for dispute resolution.

I find that the Landlord has established a total monetary claim of \$8,100.00. After setting off the security deposit of \$1,140.00 towards the award of \$8,100.00, I find that the Landlord is entitled to a monetary order in the amount of \$6,960.00. This monetary 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 breached the tenancy agreement by subletting the unit using Airbnb. The Tenant is responsible to compensate the Landlord for damage or loss that resulted.

The Landlord has established a monetary claim in the amount of \$8,100.00. I order that the Landlord can keep the security deposit in the amount of \$1,140.00 in partial satisfaction of the Landlords claim.

I grant the Landlord a monetary order in the amount of \$6,960.00.

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: March 23, 2020

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Residential Tenancy Branch