



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDCL-S, FFL  
                              MNSD, FFT

### Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties under the *Residential Tenancy Act* (the “*Act*”). The matter was set for a conference call.

The Tenant’s Application for Dispute Resolution was made on May 25, 2018. The Tenant applied for the return of their security deposit and the return of their filing fee. The Landlord’s Application for Dispute Resolution was made on June 26, 2018. The Landlord applied for a monetary order for losses due to the tenancy, permission to retain the security deposit and to recover their filing fee.

Both the Tenant and the Landlord attended the hearing and were each affirmed to be truthful in their testimony. The Tenant and the Agent were provided with the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

I have reviewed all evidence and testimony 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 monetary compensation for damages under the *Act*?
- Is the Landlord entitled to retain the security deposit and pet damage deposit in partial satisfaction of the claim?
- Is the Landlord entitled to recover the cost of the filing fee?
- Is the Tenant entitled to the return of her security deposit?
- Is the Tenant entitled to recover the cost of the filing fee?

### Background and Evidence

Both parties testified that the tenancy began on September 1, 2017, as a nine-month fixed term tenancy. Rent in the amount of \$540.00 was to be paid by the first day of each month and at the outset of the tenancy, the Tenant paid a \$270.00 security deposit. The Tenant provided a copy of the tenancy agreement into documentary evidence.

Both parties also testified that the Tenant issued a notice to end her tenancy on November 30, 2018, and moved out of the rental unit on December 30, 2018. Both parties agreed that the move-in and move out inspections had not been conducted for this tenancy.

The Landlord testified that she was able to find a new renter to take over the rental unit for January 1, 2018, and that she had no loss of rental income due to the Tenant ending her tenancy early.

The Tenant testified that she provided the Landlord with her forwarding address on January 29, 2018, and had also sent the Landlord \$83.25, via e-transfer, to pay the final hydro bill for her tenancy. The Tenant testified that she received the fund from the e-transfer back as the Landlord did not accept the transfer. The Tenant agreed that she owes the \$83.25 for hydro that the Landlord is claiming for in this hearing, but that she does not agree to anything else in the Landlord's claim.

The Landlord testified that she had emailed the Tenant requesting compensation for her time spent looking for a new renter to take over the rental unit due to the Tenant ending her tenancy early. The Landlord testified that she did not accept the funds the Tenant sent in the e-transfer as it was not the full amount she had requested.

The Landlord testified that she is requesting \$578.74; \$83.25 in hydro, \$31.49 for placing an advertisement to rent the rental unit online, 9.00 for registered mail, 18.00 for photocopies, 337.00 in labour and stress costs for her time spent re-rent the rental unit and the return of the \$100.00 filing for her application. The Landlord testified that there is no liquidated damages clause in this tenancy agreement.

### Analysis

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

### The Landlord's Claim

I find that the Landlord is in breach of section 35 of the *Act* by not conducting the move-in and move-out inspections as required. Consequently, pursuant to section 36 of the *Act*, I find that the Landlord has extinguished her right to make a claim against the Tenant's security deposit.

Regarding the Landlord's claim for compensation due to costs associated to re-renting the unit; I find that, in the absence of a liquidated damages clause in this tenancy, the requested compensation is the cost of doing business as a Landlord and is not the responsibility of the Tenant.

Furthermore, I find that there is no provision under the *Act* that would allow a Landlord to recover their costs associated with serving hearing documents or preparing evidence to support their claim. Therefore, I find that the Landlord is not entitled to recover the requested costs for sending registered mail and making photocopies.

The Landlord's application is dismissed, without leave to reapply.

Section 72 of the *Act* gives me authority to order the repayment of a fee for an application for dispute resolution. As the Landlord was not successful in her application, I find that the Landlord is not entitled to recover her \$100.00 filing fee.

### The Tenant's Claim

Section 38(1) of the *Act* gives the landlord 15 days from the later of the day the tenancy ends or the date the landlord receives the tenant's forwarding address in writing to file an Application for Dispute Resolution claiming against the deposit or repay the security deposit to the tenant.

### **Return of security deposit and pet damage deposit**

**38** (1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of

(a) the date the tenancy ends, and

(b) the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one of the following:

- (c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;
- (d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

I find that this tenancy ended on December 30, 2018, when the Tenant moved out and returned the keys to the rental unit to the Landlord. I also find that Tenant provided her forwarding address to the Landlord on January 29, 2018, via Canada Post mail. Therefore, as per section 90 of the *Act*, the Landlord was deemed to have received the Tenant's forwarding address on February 5, 2018. Accordingly, the Landlord had until February 20, 2018, to comply with section 38(1) of the *Act* by either repaying the deposit in full to the Tenant or submitting an Application for Dispute resolution to claim against the deposit.

I find that the Landlord submitted the Application for Dispute resolution to claim against the deposit on June 26, 2018. I find that the Landlord breached section 38(1) of the *Act* by not returning the Tenant's security deposit or filing a claim against the deposit within the statutory timeline.

Section 38 (6) of the *Act* goes on to state that if the landlord does not comply with the requirement to return or apply to retain the deposit within the 15 days, the landlord must pay the tenant double the security deposit.

#### **Return of security deposit and pet damage deposit**

- 38 (6) If a landlord does not comply with subsection (1), the landlord
  - (a) may not make a claim against the security deposit or any pet damage deposit, and
  - (b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

Therefore, I find that pursuant to section 38(6) of the *Act* the Tenant has successfully proven she is entitled to the return of double her security deposit.

Section 72 of the *Act* gives me authority to order the repayment of a fee for an application for dispute resolution. As the Tenant was successful in her application, I find that the Tenant is entitled to recover the \$100.00 filing fee paid for her application.

I order the Landlord to return double the security deposit, and repay the costs of the Tenant's application for this hearing, less the \$83.25 the parties have agreed is due to the Landlord for an outstanding hydro bill.

Security Deposit	\$270.00
Security Deposit Doubled (late application)	\$270.00
Recovery of the filing fee	\$100.00
	\$640.00
Hydro Bill	-\$83.25
<b>Owing to the Tenant</b>	<b>\$556.75</b>

### Conclusion

The Landlord's application is dismissed, without leave to reapply.

I grant the Tenant a Monetary Order in the amount of \$556.75. The Tenant is provided with this Order in the above terms, and the Landlord must be served with 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: July 24, 2018

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Residential Tenancy Branch