



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes                      MNDCT, MNSD, FFT

### Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- a monetary order for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("Regulation") or tenancy agreement pursuant to section 67;
- authorization to obtain a return of all or a portion of the security deposit pursuant to section 38; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

The landlord did not participate in the conference call hearing, which lasted approximately 20 minutes. The tenant attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The tenant testified that on March 7, 2018 she forwarded the tenant's application for dispute resolution hearing package ("application") via registered mail to the landlord. The tenant provided a Canada Post receipt and tracking number as proof of service.

Based on the testimony of the tenant and in accordance with sections 89 and 90 of the *Act*, I find that the landlord has been deemed served with the application on March 12, 2018, the fifth day after its registered mailing.

The tenant testified that on September 16, 2018 she personally served the landlord a subsequent package which included the monetary order worksheet. Based on the undisputed testimony of the tenant and in accordance with sections 89 and 90 of the *Act*, I find that the landlord has been deemed served with the subsequent evidence package on September 18, 2018, the day it was served.

### Issue(s) to be Decided

Is the tenant entitled to a monetary order for compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement?

Is the tenant authorized to obtain a return of all or a portion of the security deposit?

Is the tenant authorized to recover the filing fee for this application from the landlord?

### Background and Evidence

As per the submitted tenancy agreement and testimony of the tenant, the tenancy began on September 1, 2014 on a fixed term until August 31, 2015 at which time it continued on a month-to-month basis. Rent in the amount of \$1,005.00 was payable on the first of each month. The tenant remitted a security deposit in the amount of \$775.00 at the start of the tenancy, which the landlord still retains in trust.

On November 30, 2017 the tenant received a Two Month Notice to End Tenancy ("2 Month Notice") with an effective date of January 31, 2018.

On December 22, 2017 the tenant provided the landlord with her forwarding address and written notice to end the tenancy effective January 4, 2018, by way of posting. Based on the undisputed testimony of the tenant and in accordance with sections 88 and 90 of the *Act*, I find that the landlord has been deemed served with the forwarding address and written notice on December 25, 2017, three days after it was posted. The tenant testified that she did not authorize the landlord verbally or in writing, to retain the security deposit.

On January 1, 2018 the tenant paid rent in the amount of \$129.68 ( $\$1,005.00/31 = \$32.42 \times 4$  days). The tenant vacated the unit on January 4, 2018. The tenant seeks compensation for one month's rent pursuant to the 2 Month Notice and return of her security deposit. In total, the tenant seeks compensation in the amount of \$1,780.00.

### Analysis

Section 50 of the *Act* permits a tenant, who has received a 2 Month Notice, to give the landlord a ten day notice to end the tenancy earlier than the intended effective date of the landlord's notice. By giving this notice, the tenant does not lose their right to compensation equivalent to one month's rent under the tenancy agreement, as required by section 51 of the *Act*.

Section 51 of the *Act* establishes that a tenant may withhold the amount authorized from the last month's rent and, for the purposes of section 50 of the *Act*, that amount is deemed to have been paid to the landlord.

I find the tenant issued a valid ten day notice effective January 4, 2018 pursuant to section 50 of the *Act* and withheld rent pursuant to section 51 of the *Act*. Accordingly, I find the tenant is entitled to a refund for the rent deemed paid for the period after the effective date of January 4, 2018. The tenant is entitled to a rent refund for the 27 days the tenant did not occupy the unit. Accordingly, I find the tenant is entitled to compensation in the amount of \$875.32 ( $\$1,005.00/31 = \$32.42 \times 27$ )

Section 38 of the *Act* establishes that a landlord has fifteen days from the later of the date the tenancy ends or the date the landlord receives the tenant's forwarding address in writing to file an arbitration application claiming against the deposit, or return the deposit. A tenant may waive their right to the return of the security deposit through written authorization to the landlord. In the absence of written authorization from the tenant, the landlord must return the security deposit or file an application within fifteen days. Should the landlord fail to do this, the landlord must pay the tenant double the amount of the security deposit.

The tenancy ended January 4, 2018. The landlord did not file an arbitration application to retain the deposit, the landlord did not return the deposit and the landlord did not receive written authorization to retain it. Based on this, I find the tenant is entitled to double the value of her security deposit in the amount of \$1,550.00.

As the tenant was successful in this application, I find that the tenant is entitled to recover the \$100.00 filing fee paid for the application, for a total monetary amount of \$2,525.32.

#### Conclusion

I issue a monetary order in the tenant's favour in the amount of \$2,525.32 against the landlord.

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 01, 2018

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Residential Tenancy Branch