



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDCT, MNSD, FFT

### Introduction

This teleconference hearing was scheduled in response to an application by the Tenant under the *Residential Tenancy Act* (the “Act”) for monetary compensation, the return of the security deposit and for the recovery of the filing fee paid for this application.

The Tenant and the Tenant’s spouse were present for the teleconference hearing, as was the Landlord. The Landlord confirmed receipt of the Notice of Dispute Resolution Proceeding package and a copy of the Tenant’s evidence by registered mail. The Landlord did not submit any documentary evidence prior to the hearing.

All parties were affirmed to be truthful in their testimony and were provided with the opportunity to present evidence, make submissions and question the other party.

I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Branch 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 Tenant entitled to monetary compensation?

Is the Tenant entitled to the return of the security deposit?

Should the Tenant be awarded the recovery of the filing fee paid for the Application for Dispute Resolution?

### Background and Evidence

The parties were in agreement as to the details of the tenancy. The tenancy began on October 1, 2015 and ended on May 31, 2018. A security deposit of \$460.00 was paid at the outset of the tenancy. The monthly rent of \$1,025.00 was raised to \$1,125.00 when the Tenant's spouse moved in beginning in March 2018. The tenancy agreement was submitted into evidence and confirms the details as stated by the parties.

The parties also agreed that the tenancy ended due to a Two Month Notice to End Tenancy for Landlord's Use of Property (the "Two Month Notice"). The Landlord provided testimony that she served this notice to the Tenant on or around March 31, 2018 to end the tenancy on May 31, 2018.

The Landlord stated that she provided the Tenant with one month of rent compensation in the amount of \$1,025.00 by a cheque dated May 31, 2018. The Tenant submitted the cheque into evidence as well as bank information showing that the check had been returned from the bank.

The Landlord stated that she was not informed until later that the bank account the cheque was issued from had been closed. As she did not have a forwarding address for the Tenant she was not able to send her a new cheque. The Landlord was in agreement that she owes the Tenant \$1,025.00 but stated that she does not agree to an amount of \$1,125.00 as claimed by the Tenant.

The Tenant stated that she began paying \$1,125.00 in March 2018 after her spouse moved into the rental unit. She submitted into evidence a receipt dated May 8, 2018 showing that an extra \$100.00 was paid for the months of March, April and May 2018.

The Landlord agreed that an extra \$100.00 was paid for March, April and May 2018 and stated that she received the \$100.00 for each of these months on May 8, 2018. She submitted that the Tenant's spouse moved in sooner than March 2018, along with storing many of his belongings in the home prior to moving in. As such, she believes she owes the Tenant compensation in the amount of \$1,025.00, not \$1,125.00.

The Tenant also applied for the return of double the security deposit in the amount of \$920.00. She provided testimony that her forwarding address was given to the Landlord by text message on June 5, 2018.

The Tenant stated that she did not provide the Landlord permission to withhold any amount from her security deposit and has not received any amount back. After moving out, the Tenant attempted to contact the Landlord through both text and phone and did not hear back.

The Landlord stated that she did not receive the Tenant's forwarding address and had not heard from the Tenant at all since they moved out.

### Analysis

Section 38(1) of the *Act* states the following:

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.

The Tenant stated that her forwarding address was provided to the Landlord by text message. However, as text message is not a method of service under Section 88 of the *Act*, and the Landlord stated that she did not receive the address, I find that the Tenant has not yet provided her forwarding address to the Landlord in writing as required by Section 38 of the *Act*.

During the hearing the Tenant confirmed her forwarding address which was repeated back by the Landlord. As such, the Landlord has 15 days from the date of the hearing to deal with the forwarding address in accordance with Section 38 of the *Act*.

Should the Landlord not comply with the 15-day timeframe, the Tenant may find cause to file an Application for Dispute Resolution seeking double the deposit, pursuant to Section 38(6) of the *Act*.

As for the one month of rent compensation, the parties were in agreement that this is owed in accordance with Section 51 of the *Act* due to the tenancy ending through a Two Month Notice. However, the parties were not in agreement as to the amount that is owed.

Section 51(1) of the *Act* states the following:

51 (1) A tenant who receives a notice to end a tenancy under section 49 [*landlord's use of property*] is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement.

The parties agreed that beginning in March 2018 rent was \$1,125.00 per month and the Landlord testified that the Two Month Notice was served to the Tenant on March 31, 2018.

As stated in Section 51(1.1) of the *Act*, the amount owed under Section 51(1) may be withheld from the last month's rent. As such, I find that instead of the Landlord providing the compensation, the Tenant had the option of withholding rent for May 2018, which would have been an amount of \$1,125.00.

Accordingly, pursuant to Sections 51 and 67 of the *Act*, I find that the Landlord owes the Tenant one month of rent in the amount of \$1,125.00.

As the Tenant was partially successful with this application, she is also awarded half of the filing fee in the amount of \$50.00, pursuant to Section 72 of the *Act*.

### Conclusion

The Tenant's application for the return of the security deposit is dismissed, with leave to reapply.

Pursuant to Sections 67 and 72 of the *Act*, I grant the Tenant a **Monetary Order** in the amount of **\$1,175.00** for compensation of one month of rent and for the recovery of half of the filing fee paid for this application.

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: December 12, 2018

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Residential Tenancy Branch