



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNDCT, FFT

### Introduction

This hearing dealt with an Application for Dispute Resolution by the Tenant filed under the *Residential Tenancy Act*, (the “*Act*”), to for a monetary order for damage or compensation under the *Act*, and to recover the filing fee for this application. The matter was set for a conference call.

Both the Landlord and Tenant attended the hearing and were each affirmed to be truthful in their testimony. The Landlord and Tenant were provided with the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing. The parties testified that they exchanged the documentary evidence that I have before me.

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.

### Preliminary Matter

During the hearing, the Tenant withdrew her claims for \$200.00 for the loss of personal property and \$600.00 in compensation for improper eviction, reducing her overall claim for compensation to \$1,500.00.

The Landlord did not dispute the Tenant’s request to withdraw these two claims from the Tenant’s application.

I will continue in this hearing on the remaining items claimed on the Tenant's application.

### Issues to be Decided

- Is the Tenant entitled to monetary compensation for damages under the *Act*?
- Is the Tenant entitled to the return for their filing fee for this application?

### Background and Evidence

The parties agreed that the tenancy began on August 1, 2017, as a one-year fixed term tenancy, that rolled into a month to month tenancy at the end of the initial term. Rent in the amount of \$600.00 was to be paid by the first day of each month and at the outset of the tenancy, the Tenant paid a \$300.00 security deposit. The parties also agreed that the rental unit had three renters living there, including the Tenant, and that each renter had their own tenancy agreement with the Landlord. The Tenant submitted a copy of her tenancy agreement into documentary evidence.

The parties agreed that the tenancy ended on May 20, 2018, the day the move-out inspection had been completed, and the keys to the rental unit were returned to the Landlord.

The Tenant testified that she sent her forwarding address to the Landlord on May 20, 2018, via email, and that she received her security deposit back, via e-transfer on June 9, 2018. The Tenant is claiming for \$300.00, representing the doubling of her security deposit, due to the Landlord return the security deposit to her outside of the legislated timeline. The Tenant testified that she received a reply email from the Landlord to her email forwarding address, on June 9, 2018. The same day she received the e-transfer.

The Landlord testified that he never received the Tenant's forwarding address, but that he did return the security deposit, in full, to the Tenant, via e-transfer, on June 9, 2018.

The Tenant has claimed for the recovery of 5% of her rent, in the amount of \$300.00, due to repairs not being completed during her tenancy. The Tenant testified that the stairs in the rental unit were not carpeted. The Tenant confirmed that the stairs were serviceable and safe throughout the tenancy, except for the handrail that had become loose, at the end of tenancy. When asked the Tenants testified that she had never

spoken to the Landlords regarding the loose handrail or about her dissatisfaction regarding the lack of carpeting on the stairs.

The Landlord testified that the Tenant had never advised him, verbally or in writing that repairs were needed or that she was dissatisfied with the condition of the rental unit. Landlord testified that the stairs in the rental unit are serviceable and safe and that he learned of the loose handrail during the Tenant's move-out inspection, and it has been repaired.

The Tenant has claimed for the recovery of her first month's rent, August 2018, as she had paid for the full month but had not been allowed to move in until August 23, 2018, due repairs the Landlord was completing to the rental unit.

The Landlord testified that the Tenant had wanted the rental unit so badly that she had agreed to rent it early, before the repairs were completed, in order to secure the rental unit for herself. The Landlord testified that the Tenant had been advised that it would be several weeks before she would be able to move in but that she was fine with paying for the full month to ensure she did lose the place to another renter. The Landlord testified that the Tenant had advised the other two occupants of the rental unit that she had agreed to rent the place before she could move in and that she was fine with paying the rent for August even though she would not be able to move in for several weeks. The Landlord submitted two witness statements into documentary evidence, from the other occupants of the rental unit. The Landlord confirmed that he did not have a signed agreement with the Tenant, agreeing to the late move in date.

The Tenant has also claimed for \$300.00 in moving expenses. The Tenant testified that the Landlord had sent her an email, asking her to end the tenancy early, due to a relationship breakdown between the Tenant and the other two rents living in the rental property. The Tenant testified that the Landlord had offered to give her \$300.00 in moving expenses if she would agree to end her tenancy and move out. The Tenant submitted a copy of an email from the Landlord into documentary evidence.

The Landlord agreed that he had sent the Tenant the email, asking her to move out early and offering her \$300.00 to cover her moving expenses if she would agree to end the tenancy. The Landlord testified that the Tenant never responded to his request or accepted his offer of compensation. The Landlord testified that the Tenant moved out without saying a word to him or providing him with any form of notice. The Landlord testified that since the Tenant never accepted his offer, and an agreement was never finalized, he does not owe the Tenant the offered \$300.00 in compensation. Especially

since the Tenant never gave him notice of any kind that she would be leaving. The Landlord testified that due to the Tenant not responding to his offer or providing notice to end her tenancy he was unable to start advertising for a new renter and ended up losing a month's rent for June 2018. The Landlord argued that his request to end the tenancy early and his offer to provide compensation did not constitute an official and binding agreement and would have only been binding had the Tenant formally accepted his offer, and an agreement had been signed between them.

The Tenants testified that she did not reply, verbally or in writing, to the Landlord's offer, but that she had replied in action by moving out, and that she feels the Landlord owes her the offered \$300.00 for moving expenses.

### Analysis

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

I find that the parties to this dispute entered into a one-year fixed term tenancy, beginning on August 1, 2017, in accordance with the *Act*.

The Tenant has claimed for \$300.00, for the doubling of her security deposit, due to her security deposit being returned to her late. 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 accept the agreed upon testimony of these parties that the tenancy agreement ended on May 20, 2018, the date the Tenant returned the keys to the rental property to the Landlord, and the move-out inspection was completed. I also accept the agreed upon testimony of these parties that the Landlord returned the Tenant's security deposit, in full, to her on June 9, 2018

However, the parties to this dispute offered conflicting verbal testimony regarding whether or not the Landlord had received the Tenant's forwarding address. In cases where two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making a claim has the burden to provide sufficient evidence over and above their testimony to establish their claim. In this case, that would be the Tenant.

I have reviewed the documentary evidence submitted by the Tenant, and I acknowledge that the Tenant had sent her forwarding address to the Landlord via email on May 20, 2018. However, I find that the Tenant has not provided sufficient evidence to show that the Landlord had received her email. Additionally, the service provisions contained in section 880 of the *Act* do not list email as an approved form of serving documents. Therefore, in the absence of evidence that the Landlord had received the Tenant's email and the fact that email is not an approved method of service, I find that the Tenant has not provided her forwarding address to the Landlord in accordance with the *Act*.

As the security deposit had been returned to the Tenant, on June 9, 2018, I find that the security deposit was returned in accordance with the *Act*, and I dismiss this portion of the Tenant's claim.

Regarding the Tenant's claim for \$300.00 in compensation due to repairs not being completed to the rental unit, during her tenancy. Awards for compensation are provided for under sections 7 and 67 of the *Act*. A party that makes an application for monetary compensation against another party has the burden to prove their claim. The Residential Tenancy Policy Guideline #16 Compensation for Damage or Loss provides guidance on how an applicant must prove their claim. The policy guide states the following:

"The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. It is up to the party who is claiming compensation to provide evidence to establish that

compensation is due. To determine whether compensation is due, the arbitrator may determine whether:

- A party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
- Loss or damage has resulted from this non-compliance;
- The party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
- The party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

In order to determine if an award for compensation is due, I must first determine if there has been a failure to comply with the *Act*. The Tenant had claimed that the stairs in the rental unit were not carpeted. Section 32 of the Act provides that both the landlord and the tenant have obligations to repair and maintain the rental unit and residential property.

**Landlord and tenant obligations to repair and maintain**

**32** (1) A landlord must provide and maintain residential property in a state of decoration and repair that

(a) complies with the health, safety and housing standards required by law, and

(b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

(2) A tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access.

(3) A tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.

I accept the testimony of both parties that the stairs in the rental unit had not been carpeted in during this tenancy, but that the stairs had met with health, safety and housing standards as required by law. I also except that the testimony of the parties that at no time during her tenancy, had the Tenant communicated to the Landlord that she had been displeased with the state of decoration of the stairs. I find that it would be unreasonable to expect that Landlord ought to have taken action to make needed repairs to a rental unit or improve the state of decoration when a Tenant has not communicated what needs repair or what they would like to have improved.

Additionally, I find that there is no evidence before me that the Landlord was in breach of the *Act* when they did not install carpeting on the stairs of the rental unit. In the absence of a breach of the *Act*, I must dismiss the Tenant's claim for compensation for repairs not being completed during the tenancy.

As for the Tenant's claim for \$300.00 in moving expenses. I accept the testimony of these parties that the Landlord had made an offer to the Tenant to pay her moving expenses if she would agree to end the tenancy early. However, I find that there was no acceptance of the Landlord's offer by the Tenant. In the absence of official acceptance of the Landlord's offer, I find that there was no agreement created between these parties and therefore, I dismiss the Tenant's claim for \$300.00 for moving expenses.

The Tenant has also claimed for the recovery of her rent for August 2017, in the amount of \$600.00, due to late availability of the rental unit. I accept the agreed upon testimony of both parties that the Tenant was not allowed to move into the rental unit until August 23, 2017, due to ongoing renovations of the rental property and that the Tenant had paid the full rent for August 2017.

The Act defines rent as the following:

**"rent"** means money paid or agreed to be paid, or value or a right given or agreed to be given, by or on behalf of a tenant to a landlord in return for the right to possess a rental unit,

In this case, I find that the Landlord accepted rent from the Tenant but did not provide possession of the rental unit in exchange. I acknowledge the Landlord's testimony that he had advised the Tenant that the rental unit would not be available for August 1, 2018, due to the on-going renovations. I also acknowledge that the Landlords testimony and witness statements that there had been an understating between himself and the Tenant that the Tenant would pay the full rent for August 2018, but that the Tenant would not be able to occupy the rental unit for several weeks after the tenancy began.

The Act defines an unconscionable term in a tenancy agreement as the following:

**"unconscionable"** For the purposes of section 6 (3) (b) of the Act [*unenforceable term*], a term of a tenancy agreement is "unconscionable" if the term is oppressive or grossly unfair to one party.

I find the requirement for this Tenant to pay rent for a rental period in which she was not permitted to occupy the rental unit to be grossly unfair to the Tenant, and to be an unconscionable term of this tenancy. Consequently, I order the Landlord to return the

rent for the period of time between August 1, to August 22, 2018, in which the Tenant was not permitted to occupy the rental unit, in the amount of \$425.81.

Monthly Rent	\$600.00
Days in Month	31
Daily Rate	\$19.35
Day to be refunded	22
Compensation Due	\$425.81
<b>Total due</b>	<b>\$425.81</b>

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 partially successful in her application, I find that the Tenant is entitled to recover the \$100.00 filing fee paid for her application.

Pursuant to section 67 and 72 of the *Act*, I grant the Tenant a monetary order in the amount of **\$525.81**. The Order is comprised of \$425.81 in rent recovery for August 2017 and \$100.00 in the recovery of the filing fee for this application.

### Conclusion

I grant the Tenant a **Monetary Order** in the amount of **\$525.81**. 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: February 12, 2019

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Residential Tenancy Branch