



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNSD, MNRL-S, FFL

### Introduction

This hearing dealt with applications from both the landlord and tenant pursuant to the *Residential Tenancy Act* (the “**Act**”).

The landlord applied for:

- authorization to retain all or a portion of the tenant’s security deposit in partial satisfaction of the monetary order requested pursuant to section 38;
- a monetary order for unpaid rent and for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67; and
- authorization to recover her filing fee for this application from the tenant pursuant to section 72.

The tenant applied for:

- authorization to obtain a return of all or a portion of her security deposit pursuant to section 38.

Both parties attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

The landlord testified that the tenant was personally served the notice of dispute resolution package (including evidence) on October 26, 2018. The tenant confirmed this. I find that the tenant was served with this package on October 26, 2018, in accordance with section 89 of the Act.

The tenant testified that the landlord was served the notice of dispute resolution package (including evidence) via registered mail on November 1, 2018. She provided a Canada Post tracking number confirming this (reproduced on the cover of this decision).

The landlord confirmed receipt of the notice of dispute resolution package via registered mail, but was unsure of the date she received it. I find that the landlord was deemed served with this package on November 6, 2018, five days after the tenant mailed it, in accordance with sections 89 and 90 of the Act.

### Issues to be Decided

Is the landlord entitled to:

- retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested;
- a monetary order for unpaid rent and for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement; and
- to recover her filing fee for this application from the tenant?

Is the tenant entitled to:

- the return of all or a portion of her security deposit?

### Background and Evidence

While I have considered the documentary evidence and the testimony of the parties, not all details of their submissions and arguments are reproduced here. The relevant and important aspects of the parties' evidence and my findings are set out below.

The parties entered into a written tenancy agreement starting June 1, 2018. Monthly rent was \$1,495.00. The tenant paid the landlord a security deposit in the amount of \$747.50. The rental unit was fully furnished by the landlord. The landlord retains this amount. The tenant moved out of the rental unit on October 8, 2018.

The parties disagree as to whether the tenancy agreement is fixed-term or month to month. The landlord submitted into evidence a copy of a standard form tenancy agreement (RTB-1), signed by the landlord and the tenant that states the tenancy is a fixed-term lease starting June 1, 2018 and ending June 1, 2019.

The tenant uploaded a photo of an excerpt of a tenancy agreement she alleges the landlord emailed her which, in part, states: "The Term of the Lease is a periodic tenancy commencing at 12:00 noon on June 1, 2018 and continuing on a year-to-year basis until the Landlord or the Tenant terminates the tenancy." The tenant stated that prior to entering into the tenancy agreement she told the landlord's husband that she was unsure as to how long she would stay in the rental unit.

On October 1, 2018, the tenant sent the landlord an email stating she was ending the tenancy effective October 15, 2018, due to “many issues with strata regarding plumbing and the lack of consistency with the way they perform”. Both parties agree that this was the first time the tenant communicated to the landlord that there were plumbing issues with the rental unit.

The tenant testified that early in the tenancy she received a notice from the strata counsel (the rental unit was a part of a strata corporation) saying they had to enter the unit to make repairs to the unit’s plumbing. She testified that representatives of the strata visited the rental unit a number of times to repair the plumbing, and ultimately had to tape off the bathroom, which prevented the tenant from using it for some time (she testified that she was unable to bathe her child as a result of this). The tenant testified that she was told by the strata representatives who attended the rental unit that the landlord had been made aware of the plumbing issues as well.

The landlord testified that the strata never alerted her to any plumbing issues, and that the first she heard of the issues was the tenant’s October 1, 2018 email. The landlord testified that she had spoken with the tenant on several occasions between June 1, 2018 and October 1, 2018, and the tenant had never mentioned the plumbing issues to her. The tenant did not deny this. Rather, the tenant testified that she believed the landlord was already aware of the problems.

On October 8, 2018, the tenant vacated the rental unit. On October 15, 2018, she emailed the landlord asking for the return of her security deposit and she provided her with her forwarding address.

The landlord testified that on October 22, 2018 she posted a note on the door of the forwarding address, which offered to conduct a move-out inspection and walkthrough on October 24, 2018. The landlord testified that on October 24, 2018, she attended the rental unit, and the tenant did not attend. The tenant denies receiving the notice posted on the forwarding address door. Furthermore, she stated that she had attempted to phone the landlord to set up a move-out inspection, but the tenant never answered or returned her calls. The landlord denies this.

The landlord testified that she did not offer the tenant another time after October 24, 2018 when an inspection could be conducted.

Both parties agree that a move-in inspection report was never completed.

The landlord testified that, after the tenant moved out, it took her a month to coordinate with the strata to determine what was wrong with the plumbing, and if the problem had been fixed. She testified that, eventually, she determined that the plumbing issue had been fixed but that part of the bathroom had to be re-tiled.

The landlord completed this tiling, and listed the rental unit for rent on Craigslist and her personal Facebook page on December 1, 2019. She testified that she re-let the rental unit as of December 15, 2018.

The landlord claims damage as follows:

October rent	\$1,495.00
Loss of November rent	\$1,495.00
Loss of 50% of December rent	\$747.50
<b>Total</b>	<b>\$3,737.50</b>

The tenant claims for the return of her damage deposit. She submitted a large number of photographs which she says prove the unit was not damaged. The landlord gave no evidence as to whether the unit was damaged or not.

### **Analysis – Landlord’s Monetary Application**

I accept the landlord’s evidence that the tenant has not paid any portion of the rent owed for October 2018. Based on the copy of the tenancy agreement that the landlord submitted into evidence that was signed by the tenant, I find that the tenancy was a fixed-term tenancy for a period of one year. I note that the language in the photograph of the partial tenancy agreement indicates that the lease is a periodic *yearly* tenancy, which indicates that the tenant has committed to a term of not less than one year.

Section 45(2) of the Act set out how a tenant may terminate a fixed-term tenancy:

A tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that -

- (a) is not earlier than one month after the date the landlord receives the notice,
- (b) is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and

(c) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

Section 45(3) of the Act provides:

(3) If a landlord has failed to comply with a material term of the tenancy agreement and has not corrected the situation within a reasonable period after the **tenant gives written notice** of the failure, the tenant may end the tenancy effective on a date that is after the date the landlord receives the notice.

As there is no evidence before me that the tenant had provided the landlord with a notice of any breach of a material term of the tenancy I find the earliest the tenant could have ended the tenancy was at the end of the fixed term, June 1, 2019. As such, I find the tenant is responsible for the payment of rent for the duration of the fixed term *subject only to the landlord's obligation to mitigate their losses*, as set out in section 7(2) of the Act, which states:

**Liability for not complying with this Act or a tenancy agreement**

(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

In this matter, the landlord must demonstrate that he took reasonable actions to minimize the damage caused to him by the tenants breaching the tenancy agreement.

The landlord re-let the rental unit on December 15, 2018. Accordingly, she has mitigated her damages up to this point, and the tenant will not be held responsible for any loss of rental income to tenant beyond that date.

The issue then becomes whether the landlord acted reasonably in waiting until December 1, 2018 to advertise the unit for rent.

The landlord testified that it took her a month to coordinate with the strata before she was able to determine that the plumbing issue had been fixed. I find this amount of time to be reasonable. She testified that once she determined the issue was resolved, she had to retile a portion of the bathroom. She did not provide evidence as to how long this took. I find that one week is a reasonable amount of time to retile a bathroom. The landlord testified that, once advertised, she was able to move in a tenant in 15 days. I find that this is a reasonable period of time to arrange for a new tenant.

In total, I find that, in the circumstances, it was reasonable for the landlord to take 52 days (1 month for strata communications, 1 week for retiling, and 15 days for new tenant) from the day after the tenant vacated the rental unit (October 9, 2018) to re-let the rental unit (that is, until November 30, 2018).

Accordingly, I find that the landlord is entitled to damages as follows:

October rent	\$1,495.00
Loss of November rent	\$1,495.00
<b>Total</b>	<b>\$2,990.00</b>

### Security Deposit

The tenant claims for the return of the security deposit.

Section 38 of the *Act* requires a landlord to either return a tenant's security deposit in full or file for dispute resolution for authorization to retain the deposit 15 days after the *later* of the end of a tenancy and upon receipt of the tenant's forwarding address in writing. If that does not occur, the landlord is required to pay a monetary award, pursuant to section 38(6)(b) of the *Act*, equivalent to double the value of the security deposit. However, this provision does not apply if the landlord has obtained the tenant's written authorization to retain all or a portion of the security deposit to offset damages or losses arising out of the tenancy as per section 38(4)(a). A landlord may also under section 38(3)(b), retain a tenant's security or pet deposit if an order to do so has been issued by an arbitrator.

I find that the tenancy ended on the date the tenant vacated the rental unit (October 8, 2018). I find that the tenant provided her forwarding address to the landlord on October 15, 2018. Accordingly, the landlord must either repay the deposit, or claim against it, by October 30, 2018.

The landlord made an application for dispute resolution claiming against the security deposit on October 19, 2018. This is within the 15 day deadline set out by the *Act*.

However, the landlord failed to complete a move-in condition inspection report as required by section 23(4). Accordingly, section 24(2) of the *Act* applies:

**Consequences for tenant and landlord if report requirements not met**

(2) The right of a landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord

(c) does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.

I find that, in accordance with section 24(2)(c) of the Act, the landlord's right to claim against the security deposit is extinguished for failure to complete a condition inspection report.

Residential Tenancy Policy Guideline 17 states:

3. Unless the tenant has specifically waived the doubling of the deposit, either on an application for the return of the deposit or at the hearing, the arbitrator will order the return of double the deposit

[...]

- if the landlord has claimed against the deposit for damage to the rental unit and the landlord's right to make such a claim has been extinguished under the Act;

The tenant has not specifically waived the doubling of the deposit. Accordingly, I find that as the landlord's right to claim against the security deposit is extinguished (discussed above) the tenant is entitled to receive double the security deposit from the landlord.

This entitlement to double the security deposit may be offset against the amount I have ordered the tenant to pay to the landlord for damages caused by her breaching the tenancy agreement.

As the landlord was successful in her application, pursuant to section 72 of the Act, I find that she is entitled to the repayment of her filing fee of \$100.00 by the tenant.

The tenant did not apply for the repayment of her filing fee.

In summary, the tenant must pay the landlord \$1,595.00, as follows:

October and November 2018 Rent	\$2,990.00
Filing fee	\$100.00

Double Deposit credit (\$747.50x2)	-\$1,495.00
<b>Total</b>	<b>\$1,595.00</b>

### **Conclusion**

Pursuant to sections 67 and 72 of the Act, I find that the landlord is entitled to a monetary order in the amount of \$1,595.00 representing damages caused by the tenant's breach of the tenancy agreement, and her filing fee. Should the tenant fail to comply with this order, this order may be filed in, and enforced as an order of, the Small Claims Division of the Provincial 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 28, 2019

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Residential Tenancy Branch