



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      **FFT MNDCT MNSD**

### Introduction

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

- Authorization to recover the filing fees from the landlord pursuant to section 72;
- A monetary order for damages or compensation pursuant to section 67;
- An order for the return of a security deposit or pet damage deposit pursuant to section 38.

Both parties attended the hearing. The landlords were represented by BC ("landlord"). The parties acknowledged the exchange of evidence and stated there were no concerns with timely service of documents and were prepared to deal with the matters of the applications.

While I have turned my mind to all the documentary evidence, including text messages, diagrams, miscellaneous letters and e-mails, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of each of the parties' respective positions have been recorded and will be addressed in this decision.

### Preliminary Issue

One of the landlords' names was misspelled in the tenant's application. In accordance with Rules 4.2 and 6.1 of the Residential Tenancy Branch Rules of Procedure, I amended the landlord's surname. The landlord's correct name is reflected on the cover page of this decision.

### Issue(s) to be Decided

Should the tenant be compensated with the equivalent of one month's rent by the landlord?

Should the landlord be required to reimburse the tenant with an amount equal to half the security deposit?

Should the landlord be required to pay the tenant's filing fee for this application?

Background and Evidence

The tenant provided the following testimony. The tenancy began between himself, a co-tenant and a different set of landlords. Rent was set at \$1,000.00 per month and a security deposit of \$500.00 was collected from the tenants. Subsequently, the property was purchased by the current landlords and the parties entered into a new fixed term tenancy agreement, set to expire on October 31, 2018.

The co-tenant moved out of the rental unit some time in April of 2018 and the landlords signed a new fixed term tenancy agreement with the sole tenant in this application. The final tenancy agreement between the landlords and this tenant was signed on May 10, 2018 and indicates a security deposit of \$250.00 was to be collected. Copies of each of the tenancy agreements were filed as evidence.

The tenant testified the landlord illegitimately retained \$250.00, representing half of the joint \$500.00 security deposit left by his co-tenant and himself when the co-tenant left and broke the fixed term tenancy early. The tenant testified he compensated the co-tenant in cash afterwards.

The landlords advised the tenant that they wanted to take back the rental unit so their family member could move in. The landlords came to his rental unit and had him sign a mutual agreement to end tenancy ("Agreement") with an effective date of January 1, 2019. The parties disagree on whether the form was signed on October 31, 2019 or November 2, 2019 however the form is dated October 31<sup>st</sup>.

The tenant submits that it is the landlord's duty and obligation to explain to him what he was signing. The landlords had deceived him by presenting the Agreement form rather than the Two Month Notice to End Tenancy for Landlord's Use form. After he signed the Agreement form, he realized he could have been compensated with one month's rent if he was served with the Two Month Notice form. The tenant indicates he was naïve to what was happening and should not have put his faith in the landlords to properly inform him.

The landlord provided the following testimony. When the co-tenant left and broke her lease, she agreed to forfeit her half of the security deposit in the amount of \$250.00. To corroborate this, the landlord provided a note dated April 7, 2018 that reads, *'I, [tenant] hereby forfeit my damage deposit of \$250.00. April 7, 2018. [signature]'*

The landlord signed a new tenancy agreement with the sole tenant and indicated on the tenancy agreement that a security deposit of \$250.00 was to be collected by May 1, 2018. No further security deposit was collected, and the parties agree that the remainder of the original security deposit of \$250.00 was returned to the tenant when the tenancy ended.

The landlord contends that each party to the Mutual Agreement to End Tenancy was under their own obligation to review the document being signed. The tenant should have understood what he was signing as he had previously experienced being evicted, pointing out the following excerpt from the tenant's own submission,

*'At the last place I rented I received written notice of 2 months to leave, followed by appropriate 1 month's compensation, it was easy and within integrity. I was naïve to expect the same integrity from [landlord]'*

The tenant was under no obligation to sign the Agreement but having done so, he is not entitled to be compensated with the equivalent of a month's rent.

### Analysis

- One Month's Rent Compensation

While the tenant contends that the landlord has an obligation, duty or responsibility to sufficiently inform him of his rights and privileges under the *Act*, I do not agree. The responsibility to ensure he understands what he is signing lies with the tenant, not the landlord. The tenant was free to refuse signing the Agreement, or at the very least to take the time to research his own rights before signing it. His experience in being served with a 2 month notice and being compensated by a previous landlord should have made him cognizant of his rights, yet he still signed the Agreement with this landlord.

Section 51(1) of the RTA and section 44(1) of the MHPTA require a landlord who gives notice to end a tenancy for landlord's use to pay compensation to the tenant for ending the tenancy. Under the RTA, a tenant who receives a notice to end tenancy for landlord's use under section 49, that complies with the requirements set forth in Section 52 *[form and content]* 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.

In this case, the tenant was never served with a notice to end tenancy for landlord's use under section 49; he signed a Mutual Agreement to End Tenancy. As such, the tenant is not entitled to compensation as set out in section 51. This portion of the tenant's claim is dismissed.

- Tenant's claim for return of \$250.00 security deposit

Rule 6.6 of the Residential Tenancy Rules of Procedure indicate the onus to prove their case is on the person making the claim. The standard of proof is on a balance of probabilities. If the applicant is successful in proving it is more likely than not the facts occurred as claimed, the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;

3. The value of the damage or loss; and
4. Steps taken, if any, to mitigate the damage or loss.

In this case, the tenant has not proven on a balance of probabilities that the landlord has violated any section of the *Act*, regulations or tenancy agreement. The landlord has provided convincing evidence to show that the original co-tenant had forfeited her half of the \$500.00 security deposit. The remaining \$250.00 was returned to the tenant/applicant in this case. As the co-tenant was free to forfeit her half to the landlord, the tenant/applicant has no claim to it. I dismiss this portion of the tenant's claim.

As the tenant's application was unsuccessful, he is not entitled to a recovery of the filing fee.

### Conclusion

The tenant's application is dismissed.

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: June 06, 2019

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Residential Tenancy Branch