



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDC

### Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for a monetary award for damages and loss pursuant to section 67.

The landlord did not attend this hearing which lasted approximately 20 minutes. The teleconference line remained open for the duration of the hearing and the Notice of Hearing was confirmed to contain the correct hearing information. The tenant represented himself with the assistance of an advocate and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

The tenant testified that they served the landlord with the notice of application and evidence by registered mail sent on May 1, 2019. The tenant provided a valid Canada Post tracking number as evidence of service. Based on the evidence I find that the landlord was deemed served with the tenant's materials on May 6, 2019, five days after mailing, in accordance with sections 88, 89 and 90 of the *Act*.

The tenant testified that they filed an amendment to their claim on May 27, 2019 and served it on the landlord by registered mail sent on May 28, 2019. The tenant provided a valid Canada Post tracking number as evidence of service. Based on the evidence I find that the landlord was deemed served with the tenant's amendment and materials on June 2, 2019, five days after mailing, in accordance with sections 88, 89 and 90 of the *Act*.

### Issue(s) to be Decided

Is the tenant entitled to a monetary award as claimed?

### Background and Evidence

This periodic tenancy began on April 1, 2019. The monthly rent was \$657.00 payable by the first of each month. A security deposit of \$328.50 was paid at the start of the tenancy and is still held by the landlord.

The tenant was served a 2 Month Notice to End Tenancy for Landlord's Use on April 20, 2019. In accordance with section 50(1)(a) of the *Act* the tenant provided written notice to end the tenancy to the landlord on May 1, 2018 and vacated the rental unit on May 18, 2019. The tenant seeks a return of the portion of the monthly rent for the period of May 19 to May 31 which they calculate to be \$275.52.

The tenant provided a forwarding address to the landlord on May 22, 2019 on a move-out condition inspection report. The tenant testified that they did not authorize the landlord to make any deductions from the deposit.

The tenant said that they have received a payment of \$675.52 which they believe represents the equivalent of one month's rent as required under section 51 of the *Act* and an overpayment of \$18.52.

### Analysis

In accordance with section 50(2) of the *Act*, if a tenant pays rent before providing notice to end a periodic tenancy earlier than the date given on a 2 Month Notice, the landlord must refund any rent paid for a period after the effective date of the notice.

I accept the evidence of the tenant that they paid the rent for May 2019 in full. I further accept that the tenancy ended on May 18, 2019 in accordance with a written notice provided by the tenant. Accordingly, I find that the tenant is entitled to a return of the balance of rent from May 19, 2019 through May 31, 2019. I calculate the pro-rated rent to be \$275.52. ( $[\$657/31\text{days}] \times 13\text{ days} = \$275.52$ ) and issue a monetary award in that amount.

Section 38 of the *Act* requires the landlord to either return the tenant's security deposit or file for dispute resolution for authorization to retain a security deposit within 15 days of the end of a tenancy or receiving a forwarding address in writing. If that does not occur, the landlord must pay a monetary award pursuant to section 38(6) 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.

I find that the tenant's application to recover the security deposit was premature. I accept the evidence of the tenant that they provided a forwarding address to the landlord on May 22, 2019. The landlord had 15 days from that date, by June 6, 2019, to either return the deposit in full or file an application for authorization to retain the deposit. The tenant filed their amendment to the application for a return of the security deposit on May 27, 2019, within the 15 days. As such, I find that this portion of the tenant's application is premature and dismiss it with leave to reapply.

### Conclusion

I issue a monetary award in the tenant's favour in the amount of \$257.00 in the following terms:

Item	Amount
Monetary Award for Return of Rent	\$275.52
Less Overpayment from Landlord	-\$18.52
<b>Total Monetary Order</b>	<b>\$257.00</b>

The tenant is provided with these Orders in the above terms and the landlord must be served with this Order as soon as possible. Should the landlord fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders of that Court.

The balance of the tenant's application is dismissed with leave to reapply.

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 13, 2019

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Residential Tenancy Branch