



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNDCL-S, FFL

### Introduction

This teleconference hearing was scheduled in response to an application by the Landlord under the *Residential Tenancy Act* (the “Act”) for monetary compensation, to retain the security deposit towards compensation owed, and for the recovery of the filing fee paid for the Application for Dispute Resolution.

The Landlord was present for the teleconference hearing as was the Tenant and an agent for the Tenant (collectively the “Tenant”). The Tenant confirmed receipt of the Notice of Dispute Resolution Proceeding package and a copy of the Landlord’s evidence. However, during the hearing it was noted that the Tenant had not received a copy of a document showing fees paid to the strata corporation. Therefore, this evidence is not accepted and will not be included in this decision. The Landlord confirmed receipt of the Tenant’s evidence and did not bring up any issues regarding service.

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. Neither party called any witnesses.

### Issues to be Decided

Is the Landlord entitled to monetary compensation?

Should the Landlord be authorized to retain the security deposit toward compensation owed?

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

### Background and Evidence

While I have considered the relevant documentary evidence and testimony of both parties, not all details of the submissions are reproduced here.

The parties were in agreement as to the following details of the tenancy which were confirmed by the tenancy agreement submitted into evidence. The tenancy began on August 1, 2018. Rent in the amount of \$1,800.00 was due on the first day of each month. A security deposit of \$900.00 was paid at the outset of the tenancy and the Landlord is still in possession of the full security deposit amount.

The parties were not in agreement as to whether the tenancy was a fixed term agreement or a month-to-month/periodic agreement. The Landlord stated that at the start of the tenancy they discussed that the agreement would be one year, set to end on August 1, 2019. It was her belief that the tenancy agreement was signed to reflect this understanding but stated that a mistake had been made and the tenancy agreement was signed as a month-to-month agreement. However, she stated that regardless of this mistake the parties were all aware that the agreement was for a fixed term of one year.

The Tenant testified that at the start of the tenancy they discussed that they would live there for at least one year, but that she was aware that the agreement was a month-to-month agreement as noted on the agreement. She stated that in December 2018 when she was unsure how long she would be able to stay residing in the rental unit, she took the tenancy agreement to her agent who confirmed that it was a month-to-month agreement in which one month notice could be provided to end the tenancy. The Tenant stated that this confirmed to her that she was following the *Act* by providing one month written notice to end the tenancy.

The parties agreed that in late January 2019 the Tenant provided notice over the phone that the tenancy would be ending at the end of February 2019 and that written notice was provided shortly after – on or around January 30, 2019. A copy of the notice to end tenancy was included in evidence.

The Landlord stated that she began advertising the rental unit right away and was able to find a new tenant for March 15, 2019. Therefore, she noted that she is seeking

compensation for half a month's rent from the Tenant in the amount of \$900.00, instead of the full \$1,800.00 originally claimed. The Landlord is also claiming reimbursement for the \$300.00 move-in fee charged by the strata corporation. She noted that she would not have had to pay this fee again had the Tenant not broken her lease.

The Landlord and Tenant were in agreement that the Tenant's forwarding address was provided on February 28, 2019. The Landlord stated that the Tenant signed her permission for the Landlord to keep the security deposit until new tenants are found and to charge rent until new tenants are found. She referenced the last page of the tenancy agreement which states the following:

*Early termination of rental agreement.*

*February 26, 2019*

*Damage deposit will be kept until new tenants are found. Rent will be charged until new tenants are found. All parties on agreement are responsible for further rent charged. Walk through done and everything is acceptable.*

The Tenant agreed that she signed this but stated that she was vocal about not agreeing regarding the security deposit or rent charges. She noted that she signed this statement regarding the walk through only.

The Landlord provided testimony that she may have found a new tenant earlier, but that the Tenant denied access to the rental unit for some of the potential showings. She submitted copies of text message communication in which she asked to show the suite and stated that she was turned down at times when the Tenant was not available. She stated that she did not provide written 24-hour notice to enter and instead communicated through text and tried to be respectful of when the Tenant was available for the unit to be shown.

The Tenant stated that she and the Landlord discussed on the phone that a new tenant would be found easily and not to worry. The Tenant stated that she sent screenshots of the tenancy agreement to the Landlord as well as information from the Residential Tenancy Branch as she was not in agreement to the security deposit being kept or additional rent being charged.

The Tenant stated that the Landlord did not have a key so needed the Tenants to be present for showings to potential new tenants. She stated that the Landlord could have given 24-hour notice and entered for the showings.

The Landlord submitted copies of text messages into evidence in which the parties discussed whether the Landlord could retain the security deposit and whether the tenancy agreement was “terminated” or “broken”.

### Analysis

The Landlord is seeking \$900.00 for half a month's rent as well as \$300.00 for the new tenant's move-in fee, both due to the Tenant breaking a fixed term tenancy.

As stated in Section 45 of the *Act*, a month-to-month tenancy may be ended with at least one month notice, while a fixed term tenancy cannot be ended prior to the end of the fixed term agreement as stated in the tenancy agreement. In a fixed term tenancy a tenant may be responsible for any loss of rental income for the remainder of the term of the tenancy.

The tenancy agreement submitted into evidence does not state that the tenancy is a fixed term agreement and instead the box indicating that this is a month-to-month agreement is checked off. Although the Landlord stated that this was an error, I find the fact that the tenancy agreement does not include a date in which a fixed term agreement would end to be further evidence towards the finding that this is not a fixed term tenancy. Although the parties may have discussed the Tenant residing in the unit for at least one year, the tenancy agreement does not require this as it was not signed as a fixed term agreement.

As such, I find it reasonable that when circumstances changed and the Tenant needed to end the tenancy that she would look to the tenancy agreement for how to best end the tenancy. I also find it reasonable that the Tenant would have received advice that the tenancy could be ended with one month written notice. The tenancy agreement is a legal document and the Landlord had a responsibility to ensure it was filled out correctly prior to signing. If the Tenant was of the belief that the agreement was month-to-month then I find it reasonable that she would have signed the tenancy agreement as is.

Although the Landlord submitted evidence of text message conversations that she stated indicated that the Tenant was aware she was breaking the lease instead of just ending the tenancy, I do not find this to be the case. I can understand the confusion on the communication if discussions were occurring regarding continual payment of rent following notice to end the tenancy.

However, I find the tenancy agreement to be the most compelling evidence as to the agreement that was entered into and find that both parties signed agreeing to a month-to-month arrangement. In the text messages the parties discuss the ending of the tenancy and whether the Tenant should be responsible for continuing to pay rent, but I do not find this to confirm that this was a fixed term tenancy.

The Landlord and Tenant provided opposing testimony regarding whether or not this was a fixed term tenancy. As stated by rule 6.6 of the *Residential Tenancy Branch Rules of Procedure*, the onus to prove a claim, on a balance of probabilities, is on the party making the claim. When the parties provide conflicting testimony, it is up to the party with the burden of proof to submit sufficient evidence over and above their testimony to establish their claim. In this matter, I do not find sufficient evidence from the Landlord for me to determine that the tenancy was not as stated in the tenancy agreement.

As for the signed agreement at the end of the tenancy agreement, regardless of the intent of the parties when signing, I find that this agreement is not enforceable as one cannot contract outside of the *Act*. Whether or not the Tenant agreed to pay rent until a new tenant was found, the *Act* states that one month written notice ends a month-to-month agreement. As stated, I do not find sufficient evidence before me to establish that this was an error and that both parties were of the understanding that they were signing a fixed term tenancy agreement.

As such, as the Tenant provided one month notice to end the month-to-month tenancy agreement, I find that she was in compliance with the *Act*. Therefore, the tenancy ended with no obligation for the Tenant to pay rent should a new tenant not be found. I also find that as the tenancy was ended in accordance with the *Act*, the Tenant is not responsible for the move-in fee of the new tenants. I also note that a Landlord is entitled to enter the rental unit after providing 24 hour written notice to enter.

Therefore, I decline to award any compensation as claimed. As the Landlord was not successful with the application, I also decline to award the recovery of the filing fee. The Application for Dispute Resolution is dismissed, without leave to reapply.

Regarding the security deposit, as the Landlord is still in possession of the deposit I must make a decision regarding the deposit in accordance with *Residential Tenancy Policy Guideline 17*. As stated in Section 38(1) of the *Act*, a landlord has 15 days from

the later of the date the tenancy ends or the date the forwarding address is provided in writing to return the deposit or file a claim against it.

The tenancy ended at the end of February 2019 and the forwarding address was provided on February 28, 2019 with the Landlord filing the application on March 4, 2019. Therefore, I find that the Landlord applied within the 15 days allowable under the *Act*. However, as the Landlord has not established her claim and does not have written permission from the Tenant to retain any amount of the security deposit, the Landlord must return the full amount. I award the Tenant a Monetary Order in the amount of \$900.00 for the return of the security deposit.

### Conclusion

The Landlord's application is dismissed, without leave to reapply.

Pursuant to Sections 38 and 67 of the *Act*, I grant the Tenant a **Monetary Order** in the amount of **\$900.00** for the return of the security deposit. 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: June 25, 2019

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Residential Tenancy Branch