



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNRL, MNDL-S, FFL

### Introduction

This hearing was convened as a result of the landlord's Application for Dispute Resolution (the "application") seeking remedy under the Residential Tenancy Act (the "Act").

The landlord applied for a monetary order for unpaid rent and for alleged damage to the rental unit, authority to retain the tenant's security deposit, and for recovery of her filing fee paid for this application.

The landlord and the tenant's legal counsel attended the teleconference hearing. The parties had the hearing process explained to them and were affirmed.

### Preliminary and Procedural Matters

At the outset of the hearing, the parties were advised that the landlord's application was being refused, pursuant to section 59(5)(c) of the Act because the landlord's application did not provide sufficient particulars of her claim for compensation, as is required by section 59(2)(b) of the Act and Rule 2.5 of the Residential Tenancy Branch ("RTB") Rules of Procedure (the "Rules").

Specifically, the landlord failed to provide a breakdown of the amount of \$3,000.00 claimed at the time the landlord applied or before the 14 day deadline under the Rules to submit evidence expired.

Further, the landlord attempted to amend her monetary claim by evidence submitted late, or five days prior to the hearing, in contravention of the Rules. The landlord's evidence showed that her new monetary claim was in the amount of \$14,439.42.

The tenant's legal counsel submitted that the tenant did not receive the landlord's evidence.

The tenant's evidence showed that her written forwarding address was provided to the landlord in a letter to the landlord by the tenant's legal counsel, requesting a return of the tenant's security deposit of \$350.00.

I find that proceeding with the landlord's claim at this hearing would be prejudicial to the tenant, as the absence of particulars that set out how the landlord arrived at the amounts being claimed makes it difficult, if not impossible, for the tenant to adequately prepare a response to the landlord's claim. I note the landlord applied on May 3, 2019, which provided significant time for the landlord to comply with Rule 2.5, however, the landlord failed to do so.

Additionally, an applicant is not allowed to amend their claim through evidence; rather, the applicant is only able to amend their claim through an amended application, which the landlord did not do.

Both parties have the right to a fair hearing and the respondent is entitled to know the full particulars of the claim made against her at the time the applicant submits her application. Given the above, the landlord is granted liberty to reapply but is reminded to provide full particulars of her monetary claim. The landlord may include any additional pages to set out the details of her dispute in her application, as required.

I do not grant the landlord the recovery of the cost of the filing fee due to the landlord's failure to comply with Rule 2.5 of the Rules.

I also note that the tenant has filed an application for dispute resolution, which was not filed in time to schedule it to be heard as a cross application with the landlord's application. That hearing on the tenant's application is scheduled on September 24, 2019, before the undersigned arbitrator.

As I have dismissed the landlord's application claiming against the tenant's security deposit, **I find** that the tenant is entitled to the return of her full security deposit in the amount of \$350.00. **I order** the landlord to return the security deposit in the amount of **\$350.00** to the tenant within 15 days of receiving this decision to the address of her

legal counsel. The landlord was provided the legal counsel's address. However, that address is also noted in the style of cause page on this Decision.

Should the landlord fail to return the deposit as ordered, **I grant** the tenant a monetary order in the amount of \$350.00. This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that court. The landlord is advised that the cost of enforcement is subject to recovery from the landlord.

### Conclusion

The landlord's application has been refused pursuant to sections 59(5)(c) and 59(2)(b) of the Act. The landlord is at liberty to reapply for her monetary claim; however, is encouraged to provide a detailed breakdown of any future monetary claim at the time an application is submitted in accordance with Rule 2.5 of the RTB Rules.

I do not grant the filing fee.

The landlord has been ordered to return the tenant's security deposit of \$350.00 within 15 days of receipt of this Decision.

The tenant has been granted a monetary order in the amount of \$350.00 in the event she fail to return the security deposit as ordered.

This decision does not extend any applicable timelines under the *Act*.

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: July 2, 2019

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Residential Tenancy Branch