



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDCT MNSD FFT

### Introduction

On May 10, 2019, a hearing was held to address the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- return of the security deposit pursuant to section 38 of the *Act*;
- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement, pursuant to sections 51 and 67 of the *Act*; and
- recovery of the filing fee for this application pursuant to section 72 of the *Act*.

The tenant's mother D.S. attended as the tenant's agent and confirmed that she spoke on behalf of her daughter, the tenant. Landlord H.S. attended and confirmed that she spoke on behalf of both landlords.

At the outset, the tenant's agent stated the tenant was travelling out of the country and requested an adjournment or to proceed with the tenant's agent acting on behalf of the tenant. The landlord agreed to the adjournment of the hearing as the landlord advised that she was currently in hospital.

Therefore, it was agreed by both parties to adjourn this hearing to a later date to allow for the participation of both parties.

The parties were given specific instructions that no amendment or cross applications were permitted by either party, and that no further evidence was permitted to be submitted by either party.

The reconvened hearing was held on July 9, 2019 resulting in this Decision. The tenant attended and landlord H.S. attended and spoke on behalf of both landlords. This Decision is to be read in conjunction with the Interim Decision dated May 10, 2019.

At the outset of the hearing, service of documents were confirmed. The landlord confirmed receipt of the tenant's Notice of Dispute Resolution Proceeding Package and evidence and the tenant confirmed receipt of the landlord's evidence. As such, I find that the documents for this hearing were served in accordance with the *Act*.

#### Issue(s) to be Decided

Is the tenant entitled to the return of the security deposit? Is the tenant entitled to any monetary compensation as a result of a notice to end tenancy for landlord's use of property? Is the tenant entitled to recover the cost of the filing fee from the landlord?

#### Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony presented, not all details of the submissions and arguments are reproduced here. Only the aspects of this matter relevant to my findings and the decision are set out below.

A written tenancy agreement was submitted into documentary evidence. The tenancy agreement was signed by the tenant and a co-tenant not named as a party to this dispute. This month-to-month tenancy began November 1, 2017. Monthly rent of \$1,400.00 was payable on the first of the month. The tenants provided the landlord with a security deposit of \$700.00. The landlord continues to hold the security deposit.

The tenant testified that she moved out of the rental unit around July 15, 2018, however she did not provide notice to the landlord at that time as she stated that she still continued to pay a portion of the rent despite no longer residing at the rental unit. The remaining co-tenant continued to reside in the rental unit for several more months.

The tenant confirmed that she provided the landlord with her email address but did not provide the landlord with her forwarding address in writing after vacating the rental unit.

The tenant confirmed that she never received a notice to end tenancy for landlord's use, but that the remaining co-tenant received the notice. The tenant did not submit any notice to end tenancy into evidence.

#### Analysis

I have addressed the tenant's two separate claims below.

### **Compensation for Notice to End Tenancy for Landlord's Use**

In this matter, the tenant sought compensation under section 51 of the *Act*, which states as follows:

51(1) A tenant who receives a notice to end a tenancy under section 49 [*landlord's use of property*] 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.

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities.

The tenant failed to submit a copy of the notice into evidence. Further to this, the tenant confirmed that she was no longer residing in the rental unit when the notice was allegedly served to the remaining co-tenant.

As such, based on the testimony and evidence before me, on a balance of probabilities, I find that the tenant has failed to provide sufficient evidence that she was served with a notice to end tenancy for landlord's use, and therefore I find that she has failed to meet the burden of proving the merits of her claim for entitlement to compensation on the grounds of having received a notice to end tenancy for landlord's use. This part of the tenant's claim is dismissed without leave to reapply.

### **Return of the Security Deposit**

The *Act* contains comprehensive provisions for addressing security and/or pet damage deposits at the end of the tenancy. Both the landlord and the tenant have responsibilities under section 38 of the *Act*.

Section 38(1) of the *Act* requires the landlord to either return the tenant's security deposit in full or file for dispute resolution for authorization to retain the deposit 15 days after the later of:

- (a) the date the tenancy ends, **and**
- (b) the date the landlord receives the tenant's forwarding address in writing

Where a tenant seeks the return of the security deposit, the tenant bears the burden to prove when and how a written forwarding address was given to the landlord since a landlord is not required to take action with respect to the security deposit unless a written forwarding address is received from the tenant.

The legislation is very specific about the requirement for a tenant to provide their forwarding address in writing in order to “trigger” the 15-day time limit for the landlord to return the security deposit. This provision in the legislation ensures that the landlord has the current and correct address for the tenant so that the security deposit refund does not get lost or misdirected by being sent to an incorrect or inactive address, as well it allows the landlord to have an address for service of documents in the event the landlord applies for dispute resolution against the tenant.

In this case, the tenant acknowledged in her testimony during the hearing that she did not provide the landlord her forwarding address in writing after moving out of the rental unit.

As such, I find that the tenant has not provided sufficient evidence, on a balance of probabilities, to prove that the landlord was served with the tenant’s forwarding address in writing at the end of the tenancy.

However, the tenant’s Application for Dispute Resolution, which forms part of the Notice of Dispute Resolution Proceeding for this hearing, contains a written “Address for Service of Documents” for the tenant. In the hearing, the tenant confirmed that the “Address for Service” provided on the Application for Dispute Resolution was a valid address for her. For the clarity of both parties, I have noted the tenant’s Address for Service, as it appears on the tenant’s Application for Dispute Resolution, on the cover sheet of this Decision.

Accordingly, I deem that the landlord is now in receipt of a written forwarding address for the tenant as provided in the tenant’s Application for Dispute Resolution for this hearing. This finding triggers the landlord to take one of the following actions under section 38(1) of the *Act* as follows:

- (c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;
- (d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

As such, I find the tenant's Application to recover the security deposit is premature and the landlord may still address the tenant's security deposit in accordance with the above-noted provisions of section 38 of the *Act*.

To clarify, this means that the landlord has 15 days from the deemed receipt date of this decision to address the tenant's security deposit in accordance with section 38 of the *Act*. The deemed receipt date of this decision is five days from the date of this decision. The date of this decision is noted in the Conclusion section of this decision. Should the landlord fail to address the security deposit within that timeline, the tenant will be at liberty to reapply for dispute resolution to claim double the amount of the security deposit pursuant to section 38(6) of the *Act*.

As the tenant was unsuccessful in her claims for compensation at this hearing, I find that the tenant must bear the cost of her own filing fee.

### Conclusion

I dismiss the tenant's application for compensation under section 51 of the *Act* without leave to reapply.

I dismiss the tenant's application with leave to reapply to request the return of double the security deposit, should the landlord fail to address the security deposit in accordance with 38 of the *Act*, within 15 days of the deemed receipt date of this decision.

The tenant must bear the cost of her own filing fee.

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 09, 2019

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Residential Tenancy Branch