



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNDCT, MNSD, FFT

### Introduction

This teleconference hearing was scheduled in response to an application by the Tenant under the *Residential Tenancy Act* (the “Act”) for monetary compensation, for the return of the security deposit and/or pet damage deposit, and for the recovery of the filing fee paid for the Application for Dispute Resolution.

The Tenant and Landlord were both present for the teleconference hearing. The Landlord confirmed receipt of the Notice of Dispute Resolution Proceeding package and a copy of the Tenant’s evidence. The Tenant confirmed receipt of some of the Landlord’s evidence but stated that she only received the tenancy agreement and bank statements.

The Landlord stated that her entire evidence package was sent to the Tenant by registered mail on a USB device. However, in the absence of information that would confirm the documents sent to the Tenant, I find that I am not able to establish whether the remainder of the Landlord’s evidence was served to the Tenant as required by the *Residential Tenancy Branch Rules of Procedure*. Therefore, the Landlord’s evidence is not accepted and will not be considered for this decision, with the exception of the tenancy agreement and the bank statements.

The 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.

I have reviewed all oral and written evidence before me that met the requirements of the *Rules of Procedure*. However, only the evidence relevant to the issues and findings in this matter are described in this decision.

Issues to be Decided

Is the Tenant entitled to monetary compensation?

Is the Tenant entitled to the return of the security deposit and/or pet damage deposit?

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

Background and Evidence

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 started on November 1, 2016. Monthly rent was set at \$1,100.00 with a reduction of \$100.00 per month for the Tenant to take care of the yard. A security deposit of \$500.00 and a pet damage deposit of \$500.00 were paid at the outset of the tenancy and were retained by the Landlord. The Tenant submitted bank statements to show the amounts paid for each deposit.

The Tenant stated that the tenancy ended on June 30, 2017 while the Landlord stated that the Tenant moved out on July 1, 2017.

The Tenant has applied for the return of the security deposit and pet damage deposit for a total of \$1,000.00. The Tenant stated that she did not provide permission for the Landlord to retain any amount from either deposit. She also stated that the rental unit was clean and undamaged at the end of the tenancy. The Tenant submitted that she did not provide a forwarding address to the Landlord as she was uncomfortable doing so.

The Landlord was in agreement that the Tenant did not provide permission to retain the deposits. However, she stated that the Tenant did not pay rent for June 2019 and provided verbal permission for the Landlord to keep the deposits towards rent owed. The Landlord also testified as to dirt and damage in the rental unit at the end of the tenancy. The Landlord agreed that the Tenant did not provide a forwarding address.

The Tenant has also claimed for compensation in the amount of \$544.08. She testified that this included \$100.00 for the filing fee paid for the Application for Dispute Resolution, \$94.08 for a post office box rental and \$350.00 for an overpayment of rent.

Regarding the post office box rental, the Tenant stated that as she did not want the Landlord knowing where she lived, she opened up a box office box for a period of 6 months when filing the Application for Dispute Resolution. The Tenant testified as to issues in the relationship with the Landlord, particularly near the end of the tenancy and the reasons as to why she was concerned with sharing her address.

The Landlord expressed that she was unclear as to why she would pay for a post office box rental for the Tenant. The Landlord also provided her version of events that occurred during the tenancy and regarding conflict between the parties.

The Tenant is also claiming \$350.00 for an overpayment of rent. She stated that at the start of the tenancy she was told that \$100.00 would be taken off the monthly rent if the Tenant helped with yard work and removal of snow. However, she stated that the Landlord was never happy with the yard work being done and had unrealistic expectations.

The Tenant testified that in mid-February 2017 the Landlord told her that expectations were not being met and therefore that rent would again be \$1,100.00 instead of the \$1,000.00 that the Tenant was previously paying. She stated that the Landlord told her that rent was \$1,100.00 or the Tenant would have to move out. As such, the Tenant stated that she paid \$50.00 additional for half of February 2017 and then \$100.00 additional rent for the months of March, April and May 2017 for a total of \$350.00.

The Tenant submitted bank statements into evidence to show the change in bi-monthly rent payments from \$500.00 to \$550.00.

The Landlord testified that there was no overpayment of rent, and instead that rent was always \$1,100.00 as stated in the tenancy agreement. She stated that around mid-February 2017 the Tenant told her that the snow removal and yard work was too much for her so therefore the \$100.00 rent reduction no longer applied. The Landlord stated that she had provided permission to the Tenant to pay the rent twice per month and agreed that the Tenant paid \$550.00 for February 15, 2017 and then \$1,100.00 for March, April and May 2017. The Landlord stated that May 2017 was the last rent that she received.

The tenancy agreement was submitted into evidence by the Landlord and indicates that monthly rent in the amount of \$1,100.00 is due on the first of the month. The tenancy agreement also includes a note that states the following:

*Reduction of 100.00 month for outdoor yard backyard and snow removal.*

There is also a note that \$500.00 would be payable on the 1<sup>st</sup> of each month and \$500.00 on the 15<sup>th</sup>.

### Analysis

Regarding the Tenant's claim for the return of the security deposit and pet damage deposit, I refer to Section 39 of the *Act* which states the following:

39 Despite any other provision of this Act, if a tenant does not give a landlord a forwarding address in writing within one year after the end of the tenancy,

(a) the landlord may keep the security deposit or the pet damage deposit, or both, and

(b) the right of the tenant to the return of the security deposit or pet damage deposit is extinguished.

I accept the testimony of both parties that the Tenant did not provide a forwarding address. As the tenancy ended on June 30, 2017 or July 1, 2017, more than one year has passed since the ending of the tenancy. As such, I find that Section 39 of the *Act* applies as stated above and the Tenant has extinguished her right to the return of the security deposit and/or pet damage deposit. Therefore, the Tenant's claim for the return of the deposits is dismissed, without leave to reapply.

Regarding the claim for the post office box rental, I decline to award compensation for this claim. As stated in Section 7 of the *Act*, if a party does not comply with the *Act*, *Regulation* and/or tenancy agreement, then they must compensate the other party for a loss that results from the breach. However, although the Tenant testified as to safety concerns, I do not find sufficient evidence before me that the Landlord was in breach of the *Act*, *Regulation* or tenancy agreement such that the Tenant was required to rent a post office box.

Instead, I find that this was a cost that could have been incurred by either party if they chose to serve hearing documents in this manner and not directly connected to a breach by the Landlord. The Tenant's claim for the post office rental cost is dismissed, without leave to reapply.

Regarding the Tenant's claim for an overpayment of rent in the amount of \$350.00, the parties were not in agreement as to what occurred when the Tenant stopped yard work and snow removal. The Tenant stated that the Landlord was not satisfied with the work being done while the Landlord stated that the Tenant decided to no longer conduct the yard work, thus the \$100.00 rent reduction no longer applied.

As stated by rule 6.6 of the *Rules of Procedure*, the onus to prove a claim, on a balance of probabilities, is on the party making the claim. Therefore, in this matter I find that the Tenant has the burden of proof. When two parties to a dispute resolution proceeding 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.

I do not find sufficient evidence from the Tenant to support her testimony that the Landlord no longer allowed her to complete yard work for a rent reduction. I also note that I find the tenancy agreement to be evidence that the rent was set at \$1,100.00 and therefore I do not find a rent payment of \$1,100.00 to be an overpayment of rent. Instead, I find that the parties reached their own agreement regarding yard work that ended around February 2017. I do not find that the Landlord breached the *Act* or tenancy agreement by no longer providing the reduction of \$100.00 if the yard work stopped at the time, regardless of the reason for the stopping of the yard work.

I also note, as stated in Section 7(2) of the *Act*, a party claiming a loss has a duty to mitigate their loss. In this matter, the Tenant paid the rent amount of \$1,100.00 and did not dispute this until almost two years later. While the Tenant testified that she was not given a choice in paying \$1,100.00 per month, I find insufficient evidence before me to establish this. Therefore, I am not satisfied that the Tenant is entitled to the return of \$350.00 paid towards rent. The Tenant's claim for overpayment of rent is dismissed, without leave to reapply.

As the Tenant was not successful with the application, I decline to award the recovery of the filing fee paid for the Application for Dispute Resolution.

### Conclusion

The Tenant's Application for Dispute Resolution is dismissed, without 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: August 13, 2019

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Residential Tenancy Branch