



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding AMACON PROPERTY MANAGEMENT SERVICES INC. &  
WENTWORTH PROPERTIES INC.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNSD, MNDCT, FFT

### Introduction

On May 24, 2019, the Tenant applied for a Dispute Resolution proceeding seeking a return of the security deposit pursuant to Section 38 of the *Residential Tenancy Act* (the “*Act*”), seeking monetary compensation pursuant to Section 67 of the *Act*, and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

The Tenant attended the hearing, and B.C. and H.S. attended the hearing as agents for the Landlord. All in attendance provided a solemn affirmation.

The Tenant advised that she served the Notice of Hearing and digital evidence package to the Landlord by registered mail on or around June 1, 2019; however, she did not confirm if the Landlord could view this digital evidence pursuant to Rule 3.10.5 of the Rules of Procedure. B.C. confirmed that she received the Notice of Hearing package and was able to view all of the evidence except for the audio files. Based on this testimony, I am satisfied that the Landlord was served the Notice of Hearing package in accordance with Sections 89 and 90 of the *Act*. With respect to the evidence, as the Tenant did not comply with Rule 3.10.5, I have excluded the audio files submitted and they will not be considered when rendering this decision. The Tenant was permitted to provide testimony with respect to this audio evidence during the hearing. The rest of the Tenant’s evidence was accepted and will be considered when rendering this decision.

B.C. advised that the Landlord’s evidence was served to the Tenant by registered mail “about two weeks ago” and the Tenant confirmed that she received this on or around August 28 or 29.” Based on this testimony, I am satisfied that the Landlord’s evidence was served in compliance with Rule 3.15 of the Rules of Procedure. As such, I have accepted this evidence, and I will consider it when rendering this decision.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me;

however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Issue(s) to be Decided

- Is the Tenant entitled to a return of the security deposit?
- Is the Tenant entitled to a Monetary Order for compensation?
- Is the Tenant entitled to recover the filing fee?

### Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

All parties agreed that the tenancy started on March 1, 2017 for a fixed-term ending on February 28, 2018. The tenancy continued on a month to month basis after that. The Tenant gave up vacant possession of the rental unit on April 14, 2019. Rent was established at \$1,090.00 per month, due on the first of each month. A security deposit of \$525.00 was paid. A copy of the tenancy agreement was submitted as documentary evidence.

All parties agreed that the Tenant signed the move-in inspection report on March 1, 2017 and move-out inspection report on April 14, 2019. As well, a forwarding address was provided by the Tenant on the move-out inspection report.

The Tenant advised that she was seeking compensation in the amount of **\$525.00** because the Landlord advised her that any damage would be taken out of the deposit and she would be provided with a receipt for the work completed. As well, costs over and above the damage deposit would be covered by the Landlord. She stated that she contacted the Landlord multiple times after the tenancy ended regarding her deposit; however, she received no response from the Landlord.

B.C. advised that the Tenant consented in writing for the Landlord to keep the security deposit to cover damage and cleaning of the rental unit. She referenced the second page of the Rental Unit Condition Report that was submitted as documentary evidence where the Tenant signed and agreed that an amount of \$550.00 could be deducted from the security deposit.

The Tenant agreed that she signed this document, but she was told that these listed costs were estimates and she wanted receipts for the work completed. She stated that the audio recordings that she made demonstrate that these costs were estimates only

and that she would get the balance of her deposit back if the necessary work did not exceed the amount of the deposit.

As well, the Tenant advised that she was seeking compensation in the amount of **\$545.00** because the Landlord advised her that she would be responsible for the entire month's rent unless the unit was re-rented, or renovations were started. She stated that she found prospective tenants; however, the Landlord ignored them, asked for higher rent, and did not rent to any of them. As well, she advised that the Landlord's submitted receipts for work show that the rental unit was renovated in the last two weeks of April 2019.

B.C. advised that she advertised the rental unit for the same terms and tried to work with the Tenant to re-rent the unit; however, the prospective tenants did not meet the basic requirements to rent. She stated that there was no written agreement to return half the rent, but it was an understanding that they would if a suitable tenant was found. As well, she advised that the work done to repair the rental unit was not a renovation but was the necessary work to return the unit to a re-rentable condition.

### Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this decision are below.

Section 38(4)(a) of the *Act* states that the Landlord may retain an amount from the security deposit if the Tenant agrees in writing to that amount. While the Tenant wanted receipts and proof of the expenses, the consistent and undisputed testimony is that the Tenant agreed in writing for this \$550.00 deduction to be subtracted from the security deposit. There is no authority under the *Act* which allows me to consider hardship or any other situations, in this particular instance, with respect to this issue. As such, I find that the Tenant's claim has no merit. Consequently, I dismiss this portion of the Tenant's Application.

Sections 44 and 45 of the *Act* set out how periodic tenancies end and also specifies that the Tenant must give written notice to end a tenancy. As well, this notice cannot be effective earlier than "one month after the date the landlord receives the notice, and is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement." This means that the Tenant's written notice given in March 2019 would be effective for April 30, 2019 and the Tenant would be responsible for the entire month of rent regardless of when she gave up vacant possession of the rental unit. Moreover, there is no obligation for the Landlord to only accept half a month's rent because the Tenant vacated early nor is the Landlord obligated to mitigate any loss. Without a signed mutual agreement to end the tenancy

on April 14, 2019 and a signed, written agreement that the Tenant would be entitled to half a month's rent, I do not find that the Tenant is entitled to the compensation she is seeking. As such, I dismiss this claim in its entirety.

As the Tenant was not successful in her claims, I find that the Tenant is not entitled to recover the \$100.00 filing fee paid for this application.

### Conclusion

Based on my findings above, I dismiss the Tenant's Application 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: September 9, 2019

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Residential Tenancy Branch