



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDCL-S, MNRL-S, FFL  
                              MNSD, FFT

### Introduction

This teleconference hearing was scheduled in response to applications by both parties under the *Residential Tenancy Act* (the “Act”). The Landlords applied for monetary compensation and/or compensation for damages, to retain the security deposit towards compensation owed, and for the recovery of the filing fee paid for the Application for Dispute Resolution. The Tenant applied for the return of the security deposit and for the recovery of the filing fee paid for the Application for Dispute Resolution.

One of the Landlords and the Tenant were present for the hearing. The Tenant’s son was also present but did not participate in the hearing. The Tenant confirmed receipt of the Notice of Dispute Resolution Proceeding package regarding the Landlord’s application and a copy of the Landlord’s evidence. The Landlord confirmed receipt of the Notice of Dispute Resolution Proceeding package regarding the Tenant’s application and a copy of the Tenant’s documentary evidence. However, the Landlord stated that he did not receive any video evidence from the Tenant which the Tenant confirmed was not served to the Landlord and only the documentary evidence was served. Therefore, I do not accept the Tenant’s videos as evidence and the videos will not be considered in this decision.

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

### Preliminary Matters

Both Applications for Dispute Resolution named two Tenants, as did the tenancy agreement. However, at the hearing it was clarified that one of the named tenants is a minor and is the child of Tenant N.S. Therefore, I find that the Tenant's child should not be named on either application and should not be liable for any monetary decision that may result. Instead, I find that the minor was likely listed on the tenancy agreement so that the Landlord had the names of the people who would be residing in the rental unit.

Accordingly, pursuant to Section 64(3)(c) of the *Act*, I amend the applications to remove the name of the Tenant's son.

### Issues to be Decided

Are the Landlords entitled to monetary compensation and/or compensation for damages?

Should the Landlords be authorized to retain the security deposit towards compensation owed?

Are the Tenants entitled to the return of the security deposit?

Should either party 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 details of the tenancy which were confirmed by the tenancy agreement submitted into evidence. The tenancy started on April 1, 2019. Rent in the amount of \$1,600.00 was due on the first day of each month. A security deposit of \$800.00 was paid at the start of the tenancy and of which the Landlord is still holding. The Tenant was to pay 1/3 of the utility bills. The tenancy ended on June 12, 2019.

The Landlord has applied for compensation in the amount of \$1,739.00, as well as for the recovery of the \$100.00 filing fee. This includes a claim for unpaid rent for June 2019 in the amount of \$1,600.00.

The Landlord testified that the Tenant provided a cheque for \$800.00 on June 1, 2019. As this was not the full rent amount, the Landlord served the Tenant on June 2, 2019 with a 10 Day Notice to End Tenancy for Unpaid Rent (the "10 Day Notice"). The Landlord stated that he deposited the cheque which was subsequently returned from his bank as the payment had been stopped. The Landlord is also seeking compensation for the \$7.00 bank fee for the returned cheque.

The Landlord submitted a copy of a bank statement showing a deposit of \$800.00 on June 3, 2019, a deduction of \$800.00 on June 4, 2019 due to a returned cheque and a deduction of \$7.00 on June 4, 2019 for a returned cheque fee. The Landlord also submitted a copy of the returned cheque from the bank which indicates that the cheque was returned as the payment was stopped.

The Tenant stated that there was a dispute with the Landlord regarding a One Month Notice to End Tenancy for Cause (the "One Month Notice") that was served to her due to having a pet in the rental unit which she was unaware was not allowed. As such, due to the ongoing conflict between the parties the Tenant stated that she was sure the Landlord would not be returning her \$800.00 security deposit. She stated that this is why she only paid \$800.00 on June 1, 2019.

However, the Tenant testified that following the \$800.00 payment she received a 10 Day Notice from the Landlord. She noted that the 10 Day Notice indicated that \$1,600.00 was unpaid as due on June 1, 2019, instead of \$800.00. Therefore, she stopped payment on the \$800.00 cheque as she stated she was not going to pay \$800.00 if the Landlord was claiming she had paid nothing for June 2019.

The Landlord stated that the effective date of the 10 Day Notice was June 13, 2019. However, he noted that he was unaware of when the Tenant was moving out or if she was as she had told him that she would be disputing the 10 Day Notice.

The Landlord has also claimed \$132.59 for unpaid utility bills of which he submitted a copy into evidence. He stated that this amount is for the period of April and May 2019 for electricity and gas and is calculated as 1/3 of the bills. The Tenant agreed that she would pay \$132.59 for the utility bills as claimed.

The Tenant has applied for the return of the security deposit in the amount of \$800.00. The parties agreed that the Tenant's forwarding address was provided on the Condition

Inspection Report at move-out on June 12, 2019. The parties were also in agreement that they were both present for a move-in and move-out inspection.

The parties both confirmed that the Tenant did not agree to any deductions from the security deposit in writing. The Landlord stated that there was a verbal agreement to deduct the cost of the utility bills. The Tenant noted that she signed the Condition Inspection Report at move-in stating that the Landlord may deduct \$800.00 from the security deposit, however she stated that this was signed in error. A copy of the inspection report was submitted into evidence and indicates that the Tenant signed this section of the report on April 1, 2019.

### Analysis

Regarding the Landlords' claim for unpaid rent, I refer to Section 26 of the *Act* which states that a tenant must pay rent when due as per the tenancy agreement. As agreed upon by the parties and as indicated in the tenancy agreement, rent in the amount of \$1,600.00 is due on the first day of each month. As the Tenant was still residing in the rental unit on June 1, 2019, I find that she owed rent in the amount of \$1,600.00 on this date.

I accept the evidence before me that shows that \$800.00 was paid by the Tenant and then the Tenant stopped payment on the cheque. The Tenant also testified that this is what occurred. As such, I find that the Tenant did not pay any money towards June 2019 rent and therefore owes the full amount of \$1,600.00.

Although the Tenant moved out on June 12, 2019, I find that the Landlord was not aware of the date she was moving out and although there were notices to end the tenancy in effect, the Landlord was under the impression that the Tenant would be disputing the 10 Day Notice and not moving. As such, I find that it would have been difficult for the Landlord to find a new Tenant in June 2019 to mitigate potential losses.

Regarding the \$7.00 bank fee charged by the Landlord, I refer to Section 7(1)(d) of the *Residential Tenancy Regulation* which states that a landlord may charge a fee of up to \$25.00 for a bank fee charged for the return of a tenant's cheque. However, Section 7(2) of the *Regulation* also notes that a landlord may not charge this fee unless it is noted in the tenancy agreement.

Upon review of the tenancy agreement and the two-page tenancy agreement addendum, I do not find evidence of a clause that outlines that a fee will be charged for a returned cheque. As such, I find that this fee cannot be charged in accordance with the legislation, so I decline to award compensation for the bank fee.

As the Tenant agreed that she owed compensation for utilities in the amount of \$132.59, I award this amount to the Landlord.

Regarding the security deposit, I refer to Section 38(1) of the *Act* which states that 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 security deposit or file a claim against it. The parties agreed that the tenancy ended on June 12, 2019 and that the Tenant's forwarding address was provided in writing on the same date. As such, I find that the Landlord had 15 days from June 12, 2019 to return the deposit or file a claim against it.

The Landlord filed the Application for Dispute Resolution on June 13, 2019 and therefore filed within the time allowable under the *Act*. As such, I find that the Landlord was in compliance with Section 38(1) of the *Act* and does not owe the Tenant double the security deposit pursuant to Section 38(6) of the *Act*. Instead I find that the Landlord was within his rights to retain the security deposit and file an application claiming against it. The Landlord may retain the security deposit towards compensation owed.

As the Landlord was successful with the application, pursuant to Section 72 of the *Act*, I award the recovery of the filing fee in the amount of \$100.00. I decline to award the recovery of the filing fee to the Tenant. The Tenant's Application for Dispute Resolution is dismissed, without leave to reapply.

The Landlords are awarded a Monetary Order in the amount outlined below:

June 2019 rent	\$1,600.00
Utilities	\$132.59
Recovery of filing fee	\$100.00
<i>Less Security deposit</i>	<i>(\$800.00)</i>
<b>Total owing to Landlord</b>	<b>\$1,032.59</b>

Conclusion

The Tenant's Application for Dispute Resolution is dismissed, without leave to reapply.

Pursuant to Sections 67 and 72 of the *Act*, I grant the Landlords a **Monetary Order** in the amount of **\$1,032.59** as outlined above. The Landlords are provided with this Order in the above terms and the Tenant must be served with this Order as soon as possible. Should the Tenant 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: September 26, 2019

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Residential Tenancy Branch