



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNSD, FF

### Introduction

The tenant applies to recover a \$550.00 security deposit.

Both parties attended the hearing and were given the opportunity to be heard, to present sworn testimony and other evidence, to make submissions, to call witnesses and to question the other. Only documentary evidence that had been traded between the parties was admitted as evidence during the hearing.

### Issue(s) to be Decided

Does the landlord have a lawful reason to retain the deposit money?

### Background and Evidence

The rental unit is a bachelor suite in the landlord's basement. The tenancy started February 1, 2019. An addendum to the written tenancy agreement indicates the tenancy is a "minimum 6 month lease." The rent was \$1100.00 per month. The tenant paid and the landlord still holds the \$550.00 security deposit.

The tenant gave notice to end the tenancy in April to be effective May 8. The landlord pointed out to her that she would be responsible for May rent but he'd try to rent it during May. His text message of April 19 reads:

It is unfortunate you are giving your notice to end the tenancy. As per the contract between us, it states 6months but I can agree to breaking that term. You provided your 1 month notice 18 days late to move out on May 8th. You are required to provide 30 day notice on the first of the month. So you will be

required to pay the rent for May but I will try to rent the suite out for the 15 or the 1st of June. It may not rent for the 15th as a lot of people don't rent half way through the month. If I can manage to rent it out I can return some money back but I will still require the full \$1100.00 rent for May. For your damage deposit I can only return that money if there is no damage and minus the carpet cleaning fee which is already agreed within the contract.

The landlord has not returned the deposit money because the move-out condition report signed by the tenant at the move-out inspection May 8, 2019 authorizes him to keep all of it. He says he was not able to re-rent the rental unit until September and so technically the tenant was responsible for his lost rent from June and July 2019, the last two of the six months in the term.

The tenant says she signed the authorization in the move-out condition report but did not realize what she was signing. She thought it was to acknowledge something else; not to permit the landlord to keep the full deposit. She agrees he's entitled to keep \$150.00 of it for carpet cleaning. She says that after the end of the tenancy she checked the tenancy agreement and noticed that on its first page the box indicating a month to month tenancy had been checked so she is not responsible for loss of rental income after May.

### Analysis

The tenant admits she agreed to a six month fixed term tenancy. She cannot resile from that term of the agreement. Normally, a tenant breaking a fixed term tenancy by leaving early remains responsible for the balance of rent for the remainder of the term while a landlord is often under a duty to mitigate his loss by trying to find a new tenant.

However, in this case, and notwithstanding the landlord's testimony about loss rent from June and July, the landlord's text of April 19 is clear that though the tenant was breaking the fixed term agreement he was agreeable so long as she paid the May rent. The tenant did pay the May rent and so the landlord gave up any claim to loss of rental income.

Section 38(4) of the *Residential Tenancy Act* (the "Act") provides that a landlord may keep deposit money if "at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant." Given that as of the date this report was made, May 8, the landlord had given up his claim to loss rental

income and given that the report itself discloses no reason to keep deposit money for cleaning or repairs, I think it most likely that the tenant signed the document in error and that it does not represent the agreement of the parties reached that day.

In result, the tenant is entitled to recovery \$400.00 of her deposit money.

### Conclusion

The tenant is entitled to a monetary award of \$400.00. In the circumstances of this case, where, in my view, each party was partly at fault for the dispute, I award the tenant \$50.00 of the filing fee she paid to bring the application.

The tenant will have a monetary order against the landlord in the amount of \$450.00.

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: October 11, 2019

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Residential Tenancy Branch