



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNDCL-S, FFL

### Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a Monetary Order for damage or compensation, pursuant to section 67;
- authorization to retain the tenant's security deposit, pursuant to section 38; and
- authorization to recover the filing fee from the tenant, pursuant to section 72.

The tenant did not attend this hearing, although I left the teleconference hearing connection open until 1:43 p.m. in order to enable the tenant to call into this teleconference hearing scheduled for 1:30 p.m. The landlord's agent attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the landlord's agent and I were the only ones who had called into this teleconference.

The landlord's agent testified that the tenant was served with the landlord's application for dispute resolution via registered mail on November 7, 2019. A Canada Post receipt to prove the registered mailing was entered into evidence. I find that the tenant was served with the landlord's application for dispute resolution in accordance with section 89 of the *Act*.

### Issues to be Decided

1. Is the landlord entitled to a Monetary Order for damage or compensation, pursuant to section 67 of the *Act*?

2. Is the landlord entitled to retain the tenant's security deposit, pursuant to section 38 of the *Act*?
3. Is the landlord entitled to recover the filing fee from the tenant, pursuant to section 72 of the *Act*?

### Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of the landlord's agent, not all details of her submissions and arguments are reproduced here. The relevant and important aspects of the landlord's claims and my findings are set out below.

The landlord's agent provided the following undisputed testimony. This tenancy began on August 21, 2019 and ended on September 30, 2019. This was originally a fixed term tenancy set to end on August 31, 2020. Monthly rent in the amount of \$2,400.00 was payable on the first day of each month. A security deposit of \$1,200.00 was paid by the tenant to the landlord. A written tenancy agreement was signed by both parties and a copy was submitted for this application.

The landlord's agent testified that the tenant gave her verbal notice to end tenancy on September 7, 2019, effective September 30, 2019. The landlord's agent testified that she informed the tenant that she would be liable for costs arising out of the breach of the fixed term tenancy agreement and the tenant agreed to pay the landlord \$2,400.00 for breaching the fixed term tenancy. The landlord and the tenant signed into a mutual agreement to end tenancy which states:

As per the Tenant request to leave before the end of this agreement set out in ITEM-2 of the Residential Tenancy Agreement, the Tenant hereby acknowledges and agrees to pay the Landlord ONE month(s) of rent as Landlord's loss and liquidated damage, and not as a penalty, to cover the administration cost and expenses for re-renting this rental unit; the Tenant will pay \$2,400.00 to the Landlord when delivering this Agreement to the Landlord.

The landlord's agent testified that the tenant paid the landlord \$1,200.00 via cheque and verbally authorized the landlord to retain the tenant's security deposit. However, the tenant emailed the landlord's agent on October 17, 2019. The October 17, 2019 email provided the landlord with the tenant's forwarding address and requested the return of the tenant's security deposit.

The landlord filed to retain the tenant's security deposit on October 30, 2019, less than 15 days after the receipt of the tenant's forwarding address.

The landlord's agent testified that the landlord was charged a \$2,400.00 fee from his property management company to find a new tenant. The invoice for same was entered into evidence. The landlord's agent testified the landlord is seeking to retain the tenant's \$1,200.00 security deposit to cover the loss incurred as a result of the tenant breaching the fixed term tenancy.

### Analysis

Section 7(1) of the *Act* states that if a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

Section 45(2) of the *Act* states that a tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that

- (a) is not earlier than one month after the date the landlord receives the notice,
- (b) is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and
- (c) 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.

Based on the landlord's agent's undisputed testimony and the evidence provided, I find that the tenant ended the fixed term tenancy contrary to section 45(2) of the *Act* as she ended the tenancy prior to the end of the fixed term.

Based on the invoice entered into evidence for placing a new tenant at the subject rental property, I find that the landlord incurred a loss in the amount of \$2,400.00 due to the tenant's breach of section 45(2) of the *Act*.

Based on the mutual agreement to end tenancy, I find that the tenant agreed to pay the landlord \$2,400.00 for the landlord's loss. I find that the tenant paid the landlord \$1,200.00 and still owes the landlord \$1,200.00, pursuant to section 7(1) of the *Act* and the Mutual Agreement to End Tenancy.

Section 38 of the *Act* states that within 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, the landlord must do one of the following:
- (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.

I find that the landlord made an application for dispute resolution claiming against the security deposit pursuant to section 38(a) and 38(b) of the *Act*.

Section 72(2) of the *Act* states that if the director orders a tenant to make a payment to the landlord, the amount may be deducted from any security deposit or pet damage deposit due to the tenant. I find that the landlord is entitled to retain the tenant's entire security deposit in the amount of \$1,200.00.

As the landlord was successful in their application, I find that they are entitled to recover the \$100.00 filing fee from the tenant, pursuant to section 72 of the *Act*.

### Conclusion

The landlord is entitled to retain the tenant's security deposit in the amount of \$1,200.00.

I issue a Monetary Order to the landlord in the amount of \$100.00

The landlord is 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: March 10, 2020

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Residential Tenancy Branch