



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

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

### Introduction

This was a cross application hearing that dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a Monetary Order for the return of the security deposit, pursuant to section 38;
- a Monetary Order for damage or compensation under the *Act*, pursuant to section 67; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72.

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

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

Both parties attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

The landlord testified that she served the tenant with her application for dispute resolution via registered mail. The tenant confirmed receipt of the above application. I find that the landlord's application for dispute resolution was served on the tenant in accordance with section 89 of the *Act*.

The tenant testified that she served the landlord with her application for dispute resolution and evidence via email on April 15, 2019. The tenant testified that the e-mail

address she used was provided to her by the landlord at the beginning of the tenancy and the landlord sent her a copy of her tenancy agreement from that email address. The landlord did not dispute the above testimony.

The landlord testified that she did not receive the tenant's application for dispute resolution and evidence until May 8, 2020, a few hours before the hearing. The landlord testified that the e-mail address the tenant used is not her personal e-mail address and is used for rent payment and other legal matters. The landlord testified that the tenant was harassing the landlord with many emails, so the tenant's e-mails were automatically sent to a spam folder, which the landlord checked this morning.

A Director's Order dated March 30, 2020 states:

Pursuant to sections 71(2)(b) and (c) of the Residential Tenancy Act and sections 64(2)(b) and (c) of the Manufactured Home Park Tenancy Act, I order that, until the declaration of the state of emergency made under the Emergency Program Act on March 18, 2020 is cancelled or expires without being extended:

a document of the type described in section 88 or 89 of the Residential Tenancy Act or section 81 or 82 of the Manufactured Home Park Tenancy Act has been sufficiently given or served for the purposes of the applicable Act if the document is given or served on the person in one of the following ways:

the document is emailed to the email address that the person to whom the document is to be given or served has routinely used to correspond about tenancy matters from an email address that the person giving or serving the document has routinely used for such correspondence, in which case the document is deemed to have been received three days after it was emailed

Pursuant to the above Director's Order, I find that since the landlord was served at an e-mail address that was used for correspondence on tenancy matters, the landlord was deemed served on April 18, 2020, three days after it was emailed by the tenant.

### Issues to be Decided

1. Is the tenant entitled to a Monetary Order for the return of the security deposit, pursuant to section 38 of the *Act*?

2. Is the tenant entitled to a Monetary Order for damage or compensation under the *Act*, pursuant to section 67 of the *Act*?
3. Is the tenant entitled to recover the filing fee for this application from the landlord, pursuant to section 72 of the *Act*?
4. Is the landlord entitled to a Monetary Order for damage or compensation under the *Act*, pursuant to section 67 of the *Act*?
5. Is the landlord entitled to retain the tenant's security deposit, pursuant to section 38 of the *Act*?
6. Is the landlord entitled to recover the filing fee for this application 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 both parties, not all details of their respective submissions and arguments are reproduced here. The relevant and important aspects of the tenant's and landlord's claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on September 1, 2019 and ended on December 31, 2019. Monthly rent in the amount of \$1,380.00 was payable on the first day of each month. The tenancy was a month to month tenancy. A security deposit of \$690.00 was paid by the tenant to the landlord. A written tenancy agreement on the standard Residential Tenancy Branchy form was signed by both parties. Pages 1, 2 and 6 of the tenancy agreement were entered into evidence.

Both parties agree that the tenant sent the landlord her forwarding address via text on February 6, 2020. The landlord testified that she received it a few days later. The landlord applied for dispute resolution on February 17, 2020.

Both parties agree that the tenant texted and email the landlord on December 1, 2019 to inform the landlord that she planned on moving out January 1, 2019. The landlord testified that she did not receive the December 1, 2019 email but did receive the December 1, 2019 text message on December 2, 2019. The landlord testified that she informed the tenant via text that she required written and signed notification of her intention to move out.

The tenant testified that she provided signed written notice of her intention to move out by leaving a letter in the landlord's on site box on December 2, 2019. The landlord

testified that she received this notice on December 3, 2019. The landlord testified that she marketed the subject rental property for rent on December 3, 2019 at several different online platforms. The landlord testified that she was able to find a new tenant to move in on January 15, 2020. The landlord testified that the tenant did not provide one month's notice to end tenancy. The landlord testified that she is seeking loss of rental income for the first half of January 2020 in the amount of \$690.00.

The tenant testified that she provided the landlord with one month's notice, so the landlord is not entitled to keep her security deposit for lost rental income. The tenant is seeking the landlord to return her security deposit.

The tenant testified that the subject rental property had a rodent problem and that a rodent chewed through a bag to get to the peanuts inside. The tenant is seeking \$10.00 for the bag replacement. No receipts were entered into evidence. The tenant testified that she never informed the landlord about the rodents in her unit but that the landlord was aware that the building had a rodent problem.

The landlord testified that she is aware of the rodent problem in the building but never received any complaints from the tenant. The landlord testified that she has been proactive in dealing with the rodents and has hired exterminators to deal with the issue and rodent bait traps are located in and around the subject rental property. The landlord testified that she was told by the exterminator that the rodents will not enter the units if there isn't a food source for them.

The tenant testified that the subject rental property was dirty and uncleaned when she moved in. The tenant testified that she cleaned for approximately three hours when she first moved in. The tenant testified that she informed the landlord of the move in condition of the subject rental property via text on September 3, 2019. The landlord responded on September 4, 2019 that she would send a cleaner in for an hour. The tenant responded that she already cleaned the place. The above text messages were entered into evidence.

The tenant testified that she is seeking \$140.00 for the cleaning she completed because that it was a professional would have cost. The tenant testified that the cleaning rate would be around \$50.00 per hour. No receipts or quotes were entered into evidence. The tenant entered into evidence photographs of the subject rental property showing that it was not clean on move in.

The landlord testified that a joint move in condition inspection report was not completed and she did not ask the tenant to complete one.

The landlord testified that the subject rental property was not cleaned when the tenant moved out. The landlord did not contest the tenant's testimony that the subject rental property was dirty when the tenant moved in.

## Analysis

### Loss of rental income

Section 45(1) of the *Act* states that a tenant may end a periodic 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, and
- (b) 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.

Pursuant to section 45(1) of the *Act*, in order to be considered one full month's notice to end tenancy, the tenant would have had to serve the landlord with her notice to end tenancy the day before the day in the month that rent was due. In this case, rent was due on the first day of the month, so the notice to end tenancy would have had to be served on the landlord on November 30, 2019, to be effective December 31, 2019. I find that the earliest move out date that complies with section 45(1) of the *Act* for a notice to end tenancy served on the landlord on December 1-3, 2019, is January 30, 2020.

I find that the tenant did not provide one full month's notice as required under section 45(1) of the *Act*.

Residential Tenancy Policy Guideline #5 states that where the tenant gives written notice that complies with the Legislation but specifies a time that is earlier than that permitted by the tenancy agreement, the landlord is not required to rent the rental unit or site for the earlier date. The landlord must make reasonable efforts to find a new tenant to move in on the date following the date that the notice takes legal effect.

In this case, contrary to section 45 of the *Act*, less than one month's written notice was provided to the landlord to end the tenancy. The earliest date the tenant was permitted to end the tenancy was January 30, 2020. I therefore find that the tenant is responsible

for the loss of income suffered by the landlord for the first two weeks of January 2020 in the amount of \$690.00.

### Cleaning

Section 67 of the *Act* states:

Without limiting the general authority in section 62 (3) [*director's authority respecting dispute resolution proceedings*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

Policy Guideline 16 states that it is up to the party who is claiming compensation to provide evidence to establish that compensation is due. To be successful in a monetary claim, the tenant must establish all four of the following points:

1. a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
2. loss or damage has resulted from this non-compliance;
3. the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
4. the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

Section 32(1) of the *Act* states:

**32** (1)A landlord must provide and maintain residential property in a state of decoration and repair that

(a)complies with the health, safety and housing standards required by law, and

(b)having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

Based on the tenant's testimony, the text messages and photographs entered into evidence, I find that the subject rental property was not provided to the tenant in a state of decoration and repair that complies with the health, safety and housing standards required by law. I find that the landlord was required to provide the tenant with a clean rental property which the landlord failed to do, contrary to section 32(1) of the *Act*. I find that the tenant suffered a loss as a result as she cleaned the property herself. I accept

the tenant's testimony that she spent approximately three hours cleaning. I find that a charge of \$140.00 for three hours of cleaning, which equates to an hourly rate of \$46.67, to be unreasonable. I find that the tenant has failed to properly quantify her loss as no receipts or estimates were provided.

Residential Tenancy Policy Guideline 16 states that nominal damages may be awarded where there has been no significant loss or no significant loss has been proven, but it has been proven that there has been an infraction of a legal right. While the tenant failed to quantify her loss, I find that the tenant has proved that there has been an infraction of her legal right to move into a clean unit. I therefore find that the tenant is entitled to nominal damages in the amount of \$90.00.

### Bag

I accept the landlord's testimony that she hired an extermination company to deal with the rodents, in compliance with section 32 of the *Act*.

I find that the tenant failed to take reasonable actions to protect her belongings by leaving food in a bag in an apartment she knew had rodents. In addition, I find that since the tenant did not inform the landlord of the rodent problem in her unit, the tenant is not entitled to compensation for her bag damaged by rodents.

### Security Deposit

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 and pet damage deposits pursuant to section 38(a) and 38(b) of the *Act*.

Section 72(2) 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 \$690.00.

#### Filing fee

As both parties were successful in their claim, I find that neither party is entitled to recover their filing fee from the other, pursuant to section 72 of the *Act*.

#### Conclusion

I issue a Monetary Order to the tenant in the amount of \$90.00.

The tenant is provided with this Order in the above terms and the landlord must be served with this Order as soon as possible. Should the landlord 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.

The landlord is entitled to retain the tenant's security deposit in the amount of \$690.00.

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: May 08, 2020

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Residential Tenancy Branch