



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNSD, MNDCT, FFT

### Introduction

This hearing dealt with an Application for Dispute Resolution by the Tenant filed under the *Residential Tenancy Act* (the “*Act*”), for the recovery of their security deposit, for a monetary order compensation pursuant to section 51 of the *Act*, and for the return of their filing fee. The matter was set for a conference call.

The Tenant, the Landlord and the Landlord’s assistant attended the conference call hearing and were affirmed to be truthful in their testimony. Both parties were provided with the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing. The Tenant and the Landlord confirmed that they had received each others documentary evidence.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

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### Issues to be Decided

- Has there been a breach of Section 38 of the *Act* by the Landlord?
- Is the Tenant entitled to the return of their security deposit, pursuant to section 38 of the *Act*?
- Is the Tenant entitled to monetary compensation for damages under the *Act*?
- Is the Tenant entitled to the return of their filing fee for this application?

### Background and Evidence

While I have turned my mind to all of the accepted documentary evidence and the testimony of the parties, only the details of the respective submissions and/or arguments relevant to the issues and findings in this matter are reproduced here.

The parties testified that the tenancy began on September 1, 2019, as a month to month tenancy. Both parties agreed that the tenant move in a few days early in late August 2019. Rent in the amount of \$1,425.00 was to be paid by the first day of each month and Landlord is currently holding a \$1,000.00 security deposit for this tenancy. The parties agreed that the Tenant moved out of the rental unit on December 8, 2019.

The Tenant testified that the Landlord had verbally evicted them after a disagreement regarding who was responsible for shovelling snow at the rental property. The Tenant testified that they had never received a written notice from the Landlord to end the tenancy but that due to a fear that the Landlord might lock the Tenant out and remove their personal possession they decided to leave as requested. The Tenant is requesting one months rent as compensation pursuant to section 51 of the *Act*.

The Tenant testified that they had not provided the Landlord with their forwarding address before applying for dispute resolution but that their address had been included on the dispute resolution application.

The Landlord testified they were still holding the security deposit for this tenancy.

During the hearing this the Landlord was provided with the Tenant's forwarding address.

### Analysis

Based on the above, testimony and evidence, and on a balance of probabilities, I find as follows:

I accept the agreed-upon testimony of these parties that they had entered into a month to month tenancy agreement starting September 1, 2019 for a monthly rent of \$1,425.00 due on the first day of each month and that the Landlord is holding a \$1,000.00 security deposit for this tenancy. Section 19 of the *Act* sets the limit on a security deposit for a tenancy, stating the following:

**Limits on amount of deposits**

- 19** (1) *A landlord must not require or accept either a security deposit or a pet damage deposit that is greater than the equivalent of 1/2 of one month's rent payable under the tenancy agreement.*
- (2) *If a landlord accepts a security deposit or a pet damage deposit that is greater than the amount permitted under subsection (1), the tenant may deduct the overpayment from rent or otherwise recover the overpayment.*

Pursuant to section 19 of the Act, the maximum security deposit the Landlord may have accepted for this tenancy was \$712.50. However, in this case, the Landlord, accepted a \$1,000.00 security deposit. I find that the Landlord breached section 19 of the Act when they accepted a \$1,000.00 security deposit for this tenancy. The Landlord was cautioned during these proceedings regarding their breach of the Act.

The Tenant has claimed for compensation pursuant to section 51 of the Act; the Act states that a tenant who received a notice to end tenancy under section 49 of the act is entitled to the equivalent of one month's rent as compensation. Section 49 of the Act states the following:

**Tenant's compensation: section 49 notice**

- 51** (1) *A tenant who receives a notice to end a tenancy under section 49 [landlord's use of property] is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement.*

In order to confirm if the Tenant is entitled to compensation under section 51 of the Act, I must first determine if the Landlord issued a notice pursuant to section 49 of the Act. Section 49(7) of the Act states that a notice issued under this section must comply with the "form and content of a notice to end tenancy" as set out in section 52 of the Act, which states the following:

**Form and content of notice to end tenancy**

- 52** *In order to be effective, a notice to end a tenancy must be in writing and must*
- (a) be signed and dated by the landlord or tenant giving the notice,*
  - (b) give the address of the rental unit,*
  - (c) state the effective date of the notice,*

*(d) except for a notice under section 45 (1) or (2) [tenant's notice], state the grounds for ending the tenancy,  
(d.1) for a notice under section 45.1 [tenant's notice: family violence or long-term care], be accompanied by a statement made in accordance with section 45.2 [confirmation of eligibility], and  
(e) when given by a landlord, be in the approved form.*

Section 52(e) of the *Act* requires that a notice issued by a landlord, to end a tenancy, must be on the approved form. In this case, that approved form would need to have been the Residential Tenancy Branch form #RTB-32 Two Month Notice to End Tenancy for Landlord's Use of Property.

I accept the testimony of the Tenant that no written Notice had been issued by the Landlord to the end this tenancy. As the Landlord did not issue form #RTB-32 Two Month Notice to End Tenancy for Landlord's Use of Property, I find that the Landlord had not issued a legal notice to end this tenancy pursuant to section 49 of the *Act*. Consequently, as the Landlord had not issued a legal notice to end the tenancy pursuant to section 49 of the *Act*, I find that no compensation is due to the Tenant. Therefore, I must dismiss the Tenant's claim for compensation pursuant to section 51 the *Act*.

In regard to the Tenant's application for the recovery of their security deposit for this tenancy. I accept the agreed-upon verbal testimony of the Landlord and Tenant, and I find that this tenancy ended on December 8, 2019, the date the parties agreed the Tenant had moved out of the rental unit.

Section 38(1) of the *Act* gives the landlord 15 days from the later of the day the tenancy ends or the date the landlord receives the tenant's forwarding address in writing to file an Application for Dispute Resolution claiming against the deposit or repay the security deposit to the tenant.

***Return of security deposit and pet damage deposit***

***38 (1) Except as provided in subsection (3) or (4) (a), 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 accept the testimony of the Tenant that they provided their forwarding address to the Landlord, on their application for these proceedings. Accordingly, I find that the Landlord is in receipt of the Tenant's forwarding address as of the date of these proceedings, May 11, 2020.

Therefore, I find that the Landlord has until May 26, 2020, to comply with section 38(1) of the *Act* by either repaying the deposit in full to the Tenant or submitting an Application for Dispute resolution to claim against the deposit.

As a result, the Tenant would be within their rights to apply for the return of their security deposit as of May 27, 2020. However, in this case, the Tenant applied on December 9, 2019.

Consequently, I find that the Tenant prematurely submitted their application for these proceedings and did not wait the required 15 days before making their application. Therefore, I must dismiss the Tenant's application with leave to reapply.

The Landlord was verbally advised during these proceedings; I find that, as of the date of this hearing, the Landlord has now been provided with the Tenant's forwarding address. Accordingly, the Landlord now has 15 days, from the date of this hearing to either return the security deposit in full to the Tenant or make a claim against it pursuant to section 38 of the *Act*.

Section 72 of the *Act* gives me the authority to order the repayment of a fee for an application for dispute resolution. As the Tenant has not been successful in this application, I find that the Tenant is not entitled to recover the \$100.00 filing fee paid for this application.

### Conclusion

I find that as of the date of this hearing the Landlord has received the Tenant's forwarding address.

I dismiss the Tenant application for the recovery of their security deposit with leave to reapply.

I dismiss the Tenant application for compensation pursuant to section 51 of the *Act* 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: May 11, 2020

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Residential Tenancy Branch