



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Plan A Real Estate Services Ltd.  
and [tenant name suppressed to protect privacy]

## **DECISION**

**Dispute Codes**      MNDCL-S FFL  
                                 MNSDS-DR FFT

### **Introduction**

This hearing dealt with applications from both the landlord and tenant pursuant to the *Residential Tenancy Act* (the “Act”).

The landlord applied for:

- A monetary award for damages and loss pursuant to section 67;
- Authorization to retain the deposit for this tenancy pursuant to section 38; and
- Authorization to recover the filing fee from the tenant pursuant to section 72.

The tenant applied for:

- A return of the deposit for this tenancy pursuant to section 38;
- A monetary award for damages and loss pursuant to section 67; and
- Authorization to recover the filing fee from the landlord pursuant to section 72.

The landlord did not attend this hearing which lasted approximately 15 minutes. The teleconference line remained open for the duration of the hearing and the Notice of Hearing was confirmed to contain the correct hearing information. The tenant appeared, represented by counsel, and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

The tenant testified that they served the landlord with their application and evidence by email sent on April 19, 2020 to an email address routinely used by the landlord to correspond about tenancy matters from their email that they use for such correspondence. The tenant provided a valid proof of email as evidence of service. Email was a permitted method of service on April 19, 2020, pursuant to the Director’s

Order dated March 30, 2020. Accordingly, I find that the landlord was deemed served with the tenant's application and evidence on April 22, 2020, three days after emailing.

Issue(s) to be Decided

Is the landlord entitled to any of the relief sought?

Is the tenant entitled to a monetary award as claimed?

Is the tenant entitled to recover the deposit for this tenancy?

Is the tenant entitled to recover their filing fee from the landlord?

Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the claim and my findings around each are set out below.

This fixed-term tenancy began on September 1, 2019. The monthly rent was \$2,500.00 payable on the first day of each month. A security deposit of \$1,250.00 was paid at the start of the tenancy and is still held by the landlord. The tenancy ended on February 29, 2020. The tenant provided a forwarding address by a letter dated March 21, 2020 which was sent to the landlord by registered mail on that date.

The parties prepared a move-out condition inspection report and the tenant authorized the landlord to retain \$25.00 of the deposit for this tenancy. The tenant did not authorize any other deductions. The tenant now seeks a return of \$1,225.00, the value of the security deposit for this tenancy less the agreed upon deduction of \$25.00.

During the tenancy the tenant paid \$200.00 to the landlord for fines from the strata corporation managing the rental building. The strata subsequently reversed any charges to the rental unit. The tenant submits that the landlord retains \$200.00 which was not required to pay any fines to the strata and seeks a return of these funds.

Analysis

The landlord did not attend the hearing which was scheduled by conference call at 1:30pm on this date. Rule 7.3 of the Rules of Procedure provides that:

If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application with or without leave to re-apply.

Consequently I dismiss the landlord's application without leave to reapply.

Section 38 of the *Act* requires the landlord to either return the tenant's security deposit in full or file for dispute resolution for authorization to retain the deposit 15 days after the later of the end of a tenancy or upon receipt of the tenant's forwarding address in writing. If that does not occur, the landlord must pay a monetary award, pursuant to section 38(6)(b) of the *Act*, equivalent to double the value of the security deposit. However, this provision does not apply if the landlord has obtained the tenant's written permission to keep all or a portion of the security deposit as per section 38(4)(a).

I accept the tenant's undisputed evidence that the tenant provided written notice of the forwarding address by a letter dated March 21, 2020 sent by registered mail on that date. I find that the landlord is deemed to have received the forwarding address on March 26, 2020, five days after mailing, in accordance with sections 88 and 90 of the *Act*. The landlord had 15 days from March 26, 2020 to file an application to retain the deposit for this tenancy. The landlord filed their application for authorization to retain the deposit on April 7, 2020. Accordingly, I find that the landlord filed their application within the 15 days required under the *Act*.

I accept the evidence of the tenant that they provided written authorization that the landlord may retain \$25.00 of the security deposit for this tenancy but no other amount. I accept that the landlord has not returned the balance of the security deposit. Consequently, I issue a monetary award in the tenant's favour in the amount of \$1,225.00 the amount of the security deposit held by the landlord without authorization.

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

I accept the evidence of the tenant that they paid \$200.00 to the landlord for a fine that was issued by the strata corporation. I further accept that the fine was later reversed and the strata corporation determined that no fine was chargeable. I accept that the landlord has retained the \$200.00 payment provided by the tenant without cause or

authorization. Accordingly, I issue a monetary award in the amount of \$200.00 in the tenant's favour for the return of this payment.

As the tenant was successful in their application they are entitled to recover their filing fee from the landlord.

### Conclusion

The landlord's application is dismissed without leave to reapply.

I issue a monetary order in the tenant's favour in the amount of \$1,525.00. 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.

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: August 21, 2020

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Residential Tenancy Branch