



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Maple Leaf Property Management  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNRL-S, MNDCL-S, FFL

### Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Landlord on September 11, 2020 (the "Application"). The Landlord applied as follows:

- To recover unpaid rent;
- For compensation for monetary loss or other money owed;
- To keep the security deposit; and
- For reimbursement for the filing fee.

The Tenant appeared at the hearing. Nobody appeared at the hearing for the Landlord. The hearing proceeded for 30 minutes. I confirmed from the teleconference system during this time that only the Tenant and I had called into the hearing.

The Tenant confirmed the Landlord still holds her security deposit and sought return of the security deposit.

I explained the hearing process to the Tenant. The Tenant provided affirmed testimony.

Both parties submitted evidence prior to the hearing. I addressed service of the hearing package and evidence. The Tenant confirmed receipt of the hearing package and Landlord's evidence.

The Tenant testified that her evidence was sent to the Landlord's office at the location noted on the front page of this decision. The Tenant testified that this office is the Landlord's rental office and she paid rent and corresponded with the Landlord at this office during the tenancy. The Tenant testified that the evidence was sent November 08, 2020 by registered mail. The Tenant provided Tracking Number 1. I looked

Tracking Number 1 up on the Canada Post website which shows the package was sent November 08, 2020 and delivered November 10, 2020.

Based on the undisputed testimony of the Tenant and Canada Post website information, I am satisfied the Landlord was served with the Tenant's evidence in accordance with section 88(c) of the *Act*. I am also satisfied based on the undisputed testimony of the Tenant and Canada Post website information that the evidence was served in accordance with rule 3.15 of the Rules of Procedure (the "Rules").

The Tenant was given an opportunity to present relevant evidence and make relevant submissions. I have considered the oral testimony and documentary evidence of the Tenant. I have only referred to the evidence I find relevant in this decision.

### Issues to be Decided

1. Is the Landlord entitled to recover unpaid rent?
2. Is the Landlord entitled to compensation for monetary loss or other money owed?
3. Is the Landlord entitled to keep the security deposit?
4. Is the Landlord entitled to reimbursement for the filing fee?
5. Is the Tenant entitled to return of the security deposit?

### Background and Evidence

A written tenancy agreement was submitted and the Tenant confirmed it is accurate. The tenancy started March 19, 2020 and was for a fixed term ending March 31, 2021. Rent was \$2,900.00 per month due on or before the first day of each month. The Tenant paid a \$1,450.00 security deposit.

The Tenant testified that the tenancy ended August 31, 2020.

The Tenant testified that she provided the Landlord her forwarding address by registered mail and email. The email is in evidence. It was sent September 11, 2020. An agent for the Landlord replied to the email September 11, 2020. The Tenant testified that the registered mail package was sent to the Landlord at the location noted

on the front page of this decision on September 10, 2020 or October 09, 2020. The Tenant said the receipt shows "09/10/2020". The Tenant provided Tracking Number 2. I looked Tracking Number 2 up on the Canada Post website which shows the package was sent September 10, 2020 and delivered September 15, 2020.

The Tenant testified as follows. The Landlord did not have an outstanding monetary order against her at the end of the tenancy. She did not agree in writing to the Landlord keeping the security deposit. The Tenant testified that she offered to pay for some of the compensation sought; however, the Landlord did not accept this. The Tenant confirmed the discussions in this regard were negotiations which did not result in an agreement.

The Tenant testified that she participated in a move-in inspection.

The Tenant testified that she participated in the first part of the move-out inspection but then had to leave. The Tenant testified that the Landlord did not follow up about completing the move-out inspection or provide her an RTB form in this regard.

I have reviewed the Tenant's documentary evidence but do not find it necessary to outline here given the issues before me and the evidence provided.

### Analysis

Rules 7.3 and 7.4 of the Rules state:

#### 7.3 Consequences of not attending the hearing

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.

#### 7.4 Evidence must be presented

Evidence must be presented by the party who submitted it, or by the party's agent. If a party or their agent does not attend the hearing to present evidence, any written submissions supplied may or may not be considered.

Nobody appeared at the hearing for the Landlord. The Tenant did appear and was prepared to address the Application. Given this, and pursuant to rule 7.3 of the Rules, the Application is dismissed **without** leave to re-apply.

Given nobody appeared at the hearing to present the Landlord's evidence as required by rule 7.4 of the Rules, I have not considered the Landlord's evidence.

Policy Guideline 17 states at page two:

1. The arbitrator will order the return of a security deposit, or any balance remaining on the deposit, less any deductions permitted under the Act, **on:**

- **a landlord's application to retain all or part of the security deposit;** or
- a tenant's application for the return of the deposit.

unless the tenant's right to the return of the deposit has been extinguished under the Act. The arbitrator will order the return of the deposit or balance of the deposit, as applicable, **whether or not the tenant has applied for dispute resolution for its return.**

(emphasis added)

Pursuant to Policy Guideline 17, I considered the Tenant's request for return of the security deposit.

Section 38 of the *Act* sets out the obligations of a landlord in relation to a security deposit held at the end of a tenancy.

Section 38(1) of the *Act* requires a landlord to return the security deposit in full or claim against it within 15 days of the later of the end of the tenancy or the date the landlord receives the tenant's forwarding address in writing. There are exceptions to this outlined in sections 38(2) to 38(4) of the *Act*.

Based on the undisputed testimony of the Tenant, I am satisfied the tenancy ended August 31, 2020.

Based on the undisputed testimony of the Tenant and email, I am satisfied an agent for the Landlord received the Tenant's forwarding address in writing via email on September 11, 2020.

Based on the undisputed testimony of the Tenant and Canada Post website information, I am satisfied the Landlord also received the Tenant's forwarding address in writing on September 15, 2020.

I find September 11, 2020 to be the relevant date for the purposes of section 38(1) of the *Act*. As stated, I am satisfied this is the first date the Landlord received the Tenant's forwarding address in writing. Further, it is after the end date of the tenancy.

The Landlord had 15 days from September 11, 2020 to repay the security deposit in full or claim against it. The Application was filed September 11, 2020, within time. I find the Landlord complied with section 38(1) of the *Act*.

However, nobody appeared at the hearing for the Landlord to present evidence or provide a basis for the Landlord's claim against the security deposit. Pursuant to rule 6.6. of the Rules, the Landlord had the onus to prove their claim. As stated, the Application has been dismissed without leave to re-apply and therefore the Landlord is not entitled to keep the security deposit based on the Application.

Sections 38(2) to 38(4) of the *Act* state:

(2) Subsection (1) does not apply if the tenant's right to the return of a security deposit or a pet damage deposit has been extinguished under section 24 (1) [tenant fails to participate in start of tenancy inspection] or 36 (1) [tenant fails to participate in end of tenancy inspection].

(3) A landlord may retain from a security deposit or a pet damage deposit an amount that

(a) the director has previously ordered the tenant to pay to the landlord, and

(b) at the end of the tenancy remains unpaid.

(4) A landlord may retain an amount from a security deposit or a pet damage deposit if,

(a) 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...

Based on the undisputed testimony of the Tenant, I am satisfied she participated in the move-in inspection and therefore did not extinguish her rights in relation to the security deposit pursuant to section 24(1) of the *Act*.

Based on the undisputed testimony of the Tenant, I am satisfied she participated in the first part of the move-out inspection and that the Landlord did not follow up with an RTB form about completing the inspection.

Section 36(1) of the *Act* states:

36 (1) The right of a tenant to the return of a security deposit or a pet damage deposit, or both, is extinguished if

(a) **the landlord complied with section 35 (2) [2 opportunities for inspection],**  
and

(b) the tenant has not participated on either occasion.

(emphasis added)

I am not satisfied based on the evidence before me that the Tenant extinguished her rights in relation to the security deposit pursuant to section 36 (1) of the *Act*.

Given the above, I find section 38(2) of the *Act* does not apply.

Based on the undisputed testimony of the Tenant, I am satisfied the Landlord did not have an outstanding monetary order against the Tenant at the end of the tenancy. I find section 38(3) of the *Act* does not apply.

Based on the undisputed testimony of the Tenant, I am satisfied the Tenant did not agree in writing at the end of the tenancy that the Landlord could keep some or all of the security deposit. I do not find that negotiations which did not result in an agreement meets section 38(4)(a) of the *Act*. I find section 38(4) of the *Act* does not apply.

Given the above, the Landlord has no authority to keep the security deposit and must return the security deposit to the Tenant. The Landlord must return \$1,450.00 to the Tenant. There is no interest owed on the security deposit as the amount of interest owed has been 0% since 2009.

Conclusion

The Application is dismissed **without** leave to re-apply.

The Landlord must return the \$1,450.00 security deposit to the Tenant. I issue the Tenant a Monetary Order in this amount. This Order must be served on the Landlord as soon as possible. If the Landlord fails to comply with the Order, the 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 *Act*.

Dated: December 22, 2020

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Residential Tenancy Branch