



# 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 for Dispute Resolution filed under the *Residential Tenancy Act* (the "Act") made on September 16, 2020. The Landlord applied for a monetary order for monetary loss or other money owed, permission to retain the security deposit and to recover the filing fee paid for the application. The matter was set for a conference call.

The Landlord and the Tenant attended the hearing and were each affirmed to be truthful in their testimony. Both the Tenant and the Landlord were provided with the opportunity to present their evidence orally and in written and documentary form and to make submissions at the hearing.

I have reviewed all oral and written evidence 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.

### Issues to be Decided

- Is the Landlord entitled to a monetary order for monetary loss or other money owed?
- Is the Landlord entitled to retain the security deposit?
- Is the Landlord entitled to the return for their filing fee for this application?

### Background and Evidence

The Landlord testified that they had entered into a tenancy agreement with the Tenant on August 9, 2020, to start that same day, for a monthly rent of \$600.00. However, the following day, August 10, 2020, the Tenant advised them they had changed their mind and would not be moving in, requesting the return of their security deposit. The Landlord submitted a copy of the Tenancy agreement into documentary evidence.

The Landlord testified that they took immediate steps to find a new renter for the rental unit but that it took them until October 15, 2020, to secure a new renter for the rental unit. The Landlord is requesting a monetary order for their lost rental income due to the Tenant's breach of the tenancy agreement.

The Tenant agreed that they signed the tenancy agreement with the Landlord on August 9, 2020, but that it was for a start date of August 11, 2020. The Tenant claimed that the Landlord had amended the start date of the tenancy without their consent, using liquid paper to amend the day listed on the signed document. The Tenant pointed to the Landlord's documentary evidence of the tenancy agreement to support this claim.

The Landlord did not dispute the Tenant's claim that the start date of this tenancy had been amended without the Tenant's consent. When asked by this Arbitrator, the Landlord agreed that the rent for this tenancy was to be calculated as of August 11, 2020.

Additionally, both parties agreed that the Landlord had required, and the Tenant had paid a \$500.00 security deposit for this tenancy.

The Tenant argued that due to the Landlord actions of amending the tenancy agreement after it had been signed, and the fact that the Landlord had requested and collected a larger than allowed security deposit, meant that they were within their rights to walk out on this tenancy without notice.

## Analysis

Based on the evidence before me, the testimony of these parties, and on a balance of probabilities that:

I accept the testimony of the Tenant supported by the documentary evidence, and I find that these parties entered into a fixed term tenancy for a period of eleven months and 21 days, starting August 11, 2020, and ending August 31, 2021, for a monthly rent of \$600.00 per month payable on the 1st day of each month.

I also accept the testimony of the Tenant supported by the tenancy agreement, that the Landlord had collected a \$500.00 security deposit for this tenancy.

Section 19 of the *Act* limits the amount of security deposit a landlord may require under a tenancy agreement.

### ***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.*

I find that the Landlords breached section 19 of the *Act* by requiring the Tenant to pay a security deposit in excess of a half month's rent.

I accept the agreed-upon testimony of these parties that the Tenant ended this tenancy on August 10, 2020, never taking possession of the rental unit. I also except the Landlord's testimony that they were in receipt of the Tenant's forwarding address by mail on or about August 29, 2020.

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 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 find that this tenancy ended on August 10, 2020, the date the Tenant refused to move into the rental unit and advised the Landlord that they were ending this tenancy and that the Landlord had received the Tenant's forwarding address by August 29, 2020. Accordingly, the Landlord had until September 14, 2020, to comply with section 38(1) of the Act by either repaying the security deposit in full to the Tenant or submitting an Application for Dispute resolution to claim against the security deposit. The Landlord, in this case, did not file until September 16, 2020, two days after the timeline to apply had expired.

I find that the Landlord breached section 38 (1) of the Act by not returning the Tenant's security deposit or filing a claim against the deposit within the statutory timeline.

Section 38 (6) of the Act goes on to state that if the landlord does not comply with the requirement to return or apply to retain the deposit within the 15 days, the landlord must pay the tenant double the security deposit.

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

- 38 (6)** *If a landlord does not comply with subsection (1), the landlord*
- (a) may not make a claim against the security deposit or any pet damage deposit, and*
  - (b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.*

Therefore, I find that pursuant to section 38(6) of the Act the value of the security deposit held for this tenancy has doubled in value to the amount of \$1,000.00.

As for the Landlord's claim for compensation due to the lost rental income between August 11, 2020, to October 14, 2020. Section 45(2)(b) of the Act states that a tenant

cannot end a tenancy agreement earlier than the date specified in the tenancy agreement.

***Tenant's notice***

***45(2) 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.*

After reviewing the tenancy agreement, I find that this tenancy could not have ended in accordance with the *Act* until August 31, 2021. I find that the Tenant failed to comply with the *Act* when they gave notice to the Landlord to end the tenancy as of August 10, 2020.

Awards for compensation due to damage are provided for under sections 7 and 67 of the *Act*. A party that makes an application for monetary compensation against another party has the burden to prove their claim. The Residential Tenancy Policy Guideline #16 Compensation for Damage or Loss provides guidance on how an applicant must prove their claim. The policy guide states the following:

“The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. To determine whether compensation is due, the arbitrator may determine whether:

- A party to the tenancy agreement has failed to comply with the *Act*, regulation or tenancy agreement;
- Loss or damage has resulted from this non-compliance;
- The party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
- The party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

I accept the Landlord's testimony that they took immediate steps to find a new renter for the rental unit and that they were able to secure a new renter as of October 15, 2020. I find that the Tenant's breach of section 45 of the *Act* resulted in a loss of rental income to the Landlord for the period between August 11, 2020, to October 14, 2020.

I have reviewed the Landlord's testimony and documentary evidence, and I find that the Landlord has provided sufficient evidence to prove the value of their lost rental income and that they acted reasonably to minimize their damages or losses due to the Tenant's breach. Therefore, I find that the Landlord has established an entitlement to a monetary award in the amount of \$1,282.19, comprised of 65 days of lost rental income for the period between August 11, 2020, to October 14, 2020. The Landlord is granted permission to retain the security deposit they are holding for this tenancy in partial satisfaction of this award.

Monthly Rent	600.00
Yearly Rent	7,200.00
Per Diem	19.73
Days Refunded	65
<b>Awarded to TT</b>	<b>1,282.19</b>

As for the Landlord's claim for compensation in the amount of \$200.00 for their time to file and participate in the dispute resolution proceedings with this Tenant. The Landlord was advised during these proceedings, that with the exception of compensation for filing the Application for Dispute Resolution, the *Act* does not permit a party to claim for compensation for other costs associated with participating in the dispute resolution process. Therefore, I dismiss the Landlord's claim for \$200.00 in compensation for their time to participate in dispute resolution proceedings.

Section 72 of the *Act* gives me the authority to order the repayment of a fee for an application for dispute resolution. However, due to the breaches of the *Act* committed by this Landlord I decline to award the Landlord, the recovery of the filing fee paid for this hearing.

I grant the Landlord a monetary order of \$282.19, consisting of \$1,282.19 in lost rental income, less \$1,000.00 in the double security deposit held for this tenancy.

Conclusion

I find for the Landlord under sections 26, 65 and 72 of the Act. I grant the Landlord a **Monetary Order** in the amount of **\$282.19**. 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: January 11, 2021

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Residential Tenancy Branch