



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      Landlord: MNDC MNSD FF  
Tenant: MNSD FF

### Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties. The participatory hearing was held, via teleconference, on January 19, 2021.

The Landlord and the Tenant both attended the hearing. Both parties confirmed receipt of each other's documentary evidence and Notice of Hearing packages.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence submitted in accordance with the rules of procedure, and evidence that is relevant to the issues and findings in this matter are described in this Decision.

### Issue(s) to be Decided

#### *Landlord*

- Is the Landlord entitled to compensation for damage or loss under the Act (unpaid rent)?
- Is the Landlord entitled to keep the security/pet deposit to offset the amounts owed by the Tenant?

#### *Tenant*

- Is the Tenant entitled to the return of the deposit held by the Landlord?

## Background and Evidence

Both parties agree that:

- The tenancy began in February 2019, and it ended at the end of August 2020, when the Tenant moved out.
- Monthly rent was set at \$2,250.00 and was due on the first of the month.
- Initially, the Landlord collected \$1,125.00 as a security deposit, and \$1,125.00 as a pet deposit.
- The Landlord has not yet returned any of the deposits to the Tenant.

The Landlord provided a spreadsheet to outline some of the rent amounts that are owed by the Tenant. The Landlord testified that:

- the Tenant fell behind on rent starting in April 2020.
- For the month of April 2020, the Tenant paid \$1,125.00, and agreed to forfeit \$1,125.00 of her deposits paid to offset the remainder of rent she owed for that month.
- For the month of May, the Tenant only paid \$1,250.00
- For the month of June, the Tenant only paid \$1,550.00
- For the Month of July, the Tenant only paid \$1,850.00
- For the Month of August, the Tenant paid in full

The Landlord explained that after totalling what was paid by the Tenant over April, through till August, she determined that the Tenant was \$2,100.00 behind as of August 2020. The Landlord also noted in her spreadsheet that the Tenant may also owe September rent as well, on top of the \$2,100.00, given the lack of proper notice that was given, and the difficulties she had finding new renters. The Landlord stated she is not seeking to recover all these amounts, in full, since she is trying to be reasonable, given the hardships. The Landlord stated she is only seeking to retain the remaining deposit of \$1,125.00, plus the filing fee, for all the rent owed.

The Tenant agreed that the above amounts are accurate, and confirmed that she came to an agreement with the Landlord for her to keep \$1,125.00 in deposits to offset the amount she owed for April 2020, as noted above. The Tenant presented copies of text messages she had with the Landlord showing many discussions and conversations that were had regarding what rent was paid, what was owing, and what the parties were going to do, going forward. Although some thoughts and ideas were exchanged, it does not appear any formal agreement was reached about whether or not the Landlord was going to forgive the rent amount for May 2020 onwards.

On the Tenant's application, she indicated she is seeking \$1,125.00 back, which is the deposit still held by the Landlord. The Tenant agrees that she previously authorized the Landlord to retain \$1,125.00 from her initial deposit of \$2,250.00, so all she wants back is the remaining part of the deposit.

### Analysis

A party that makes an application for monetary compensation against another party has the burden to prove their claim.

First, I turn to the agreement between the Landlord and the Tenant with respect to the security deposit. Both parties explicitly acknowledged in the hearing that they came to an agreement for the Landlord to retain \$1,125.00 to pay for half of April 2020 rent. This was done back in April 2020.

I find the parties mutually agreed to this amount, and I find the Tenant formally forfeited \$1,125.00 of her initial deposit amount of \$2,250.00, which leaves a balance of \$1,125.00, which will be addressed further below. I hereby record this agreement regarding the deposit in writing, as part of this decision.

I turn to the Landlords' claim for monetary compensation based on unpaid rent.

Section 26 of the *Act* confirms that a Tenant must pay rent when it is due unless the Tenant has a right under the *Act* to deduct all or a portion of rent (security deposit overpayment, emergency repairs paid for by the Tenant, illegal rent increases, or another Order by an Arbitrator).

In this case, the amount of rent that is due each month, is the amount listed on the tenancy agreement, given there does not appear to be any legal rent increase, or legal basis to reduce the rent. Although the Tenant provided some text messages about rent payment over the material time, I find they are not sufficiently clear such that I could find they legally alter or amend the amount of rent that is due each month. There is no evidence the parties ever formally agreed, in writing, that monthly rent was anything but the initially agreed up on amount, \$2,250.00. I find this is the amount of rent that was due, each month. The Tenant does not refute the payments listed by the Landlord for May, June, July, and August, which I find leaves a balance owing of at least \$2,100.00.

The Landlord stated she does not want to collect on the full amount, and only wants permission to keep the remaining deposit of \$1,125.00 (plus the filing fee). I hereby reduce the monetary award to this amount.

Given the Landlord is not seeking more than this, it is not necessary for me to consider whether or not the Tenant is also responsible for September 2020 rent, which is the period of time the rental unit sat empty after the Tenant left.

Section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. As the Landlord was substantially successful with her application, I order the Tenant to repay the \$100.00 fee that the Landlord paid to make application for dispute resolution. I also authorize the Landlord to retain the remaining deposit to satisfy some of the amount owing. In summary, the Landlord is granted the following:

| <b>Item</b>                          | <b>Amount</b>   |
|--------------------------------------|-----------------|
| Rent owing (as above)                | \$1,125.00      |
| PLUS: Filing Fee                     | \$100.00        |
| Subtotal:                            | \$1,225.00      |
| LESS: Remaining Security/pet Deposit | \$1,125.00      |
| <b>Total Amount</b>                  | <b>\$100.00</b> |

The Tenant's application for the return of her deposit is dismissed, given my findings thus far. Given the Tenant is not granted the return of her deposit, I decline to award her the recovery of the filing fee she paid.

### Conclusion

The Landlord is granted a monetary order in the amount of **\$100.00**, as specified above. This order must be served on the Tenant. If the Tenant fails to comply with this order the Landlord may file the order in the Provincial Court (Small Claims) and be 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 20, 2021

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Residential Tenancy Branch