



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNDCL-S, FFL

### Introduction

On April 15, 2021, the Landlord applied for a Dispute Resolution proceeding seeking a Monetary Order for compensation pursuant to Section 67 of the *Residential Tenancy Act* (the “*Act*”), seeking to apply the security deposit towards these debts pursuant to Section 38 of the *Act*, and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

The Landlord attended the hearing, and the Tenant attended the hearing as well, with L.W. attending as her translator. At the outset of the hearing, I explained to the parties that as the hearing was a teleconference, none of the parties could see each other, so to ensure an efficient, respectful hearing, this would rely on each party taking a turn to have their say. As such, when one party is talking, I asked that the other party not interrupt or respond unless prompted by myself. Furthermore, if a party had an issue with what had been said, they were advised to make a note of it and when it was their turn, they would have an opportunity to address these concerns. The parties were also informed that recording of the hearing was prohibited and they were reminded to refrain from doing so. All parties acknowledged these terms. As well, all parties in attendance provided a solemn affirmation.

The Landlord advised that the Notice of Hearing package was served to the Tenant by email on April 27, 2021. The Tenant confirmed receiving this package by email and she did not have any position with respect to the manner with which this package was served. Despite this package not being served in accordance with Section 89 of the *Act*, as the Tenant received this package and took no issue with how it was served, I am satisfied that the Tenant was duly served the Landlord’s Notice of Hearing package.

The Landlord also advised that she served her evidence to the Tenant by email on August 10, 2021; however, the Tenant confirmed that she only received some documents as attachments. As such, I have only accepted some of the Landlord's evidence and will consider it when rendering this Decision.

The Tenant advised that she served her evidence to the Landlord by email on August 20, 2021; however, she did not check to see if the Landlord could view her digital evidence pursuant to Rule 3.10.5 of the Rules of Procedure. The Landlord confirmed that she received this evidence, but she was unable to view the Tenant's video evidence. As such, I have accepted the Tenant's evidence, with the exception of the video evidence, and will consider it when rendering this Decision.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

#### Issue(s) to be Decided

- Is the Landlord entitled to a Monetary Order for compensation?
- Is the Landlord entitled to apply the security deposit towards these debts?
- Is the Landlord entitled to recover the filing fee?

#### Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

All parties agreed that that the tenancy started on December 1, 2020; however, the parties differed on whether the tenancy ended on March 31 or April 1, 2021. Rent was established at an amount of \$1,425.00 per month and was due on the first day of each month. A security deposit of \$712.50 was also paid. A partial copy of the signed tenancy agreement was submitted as documentary evidence.

The Tenant stated that she never provided her forwarding address in writing to the Landlord, despite making an attempt to do so.

The Landlord advised that she is seeking compensation in the amount of **\$712.50** because the Tenant was in a month-to-month tenancy and she gave her notice to end her tenancy in writing on March 1, 2021 that was effective for March 31, 2021. As the Tenant gave late notice to end her tenancy, the Landlord could seek the full month of April 2021 rent; however, she is only seeking compensation for the loss of half that month's rent.

The Tenant advised that she texted the Landlord on February 28, 2021 regarding her intent to end the tenancy and her Landlord requested a letter in writing to confirm this intent. She provided her notice to end her tenancy in writing by placing it in the Landlord's mailbox on March 1, 2021. This notice was effective for March 31, 2021.

### Analysis

Upon consideration of the testimony before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this Decision are below.

Section 38 of the *Act* outlines how the Landlord must deal with the security deposit at the end of the tenancy. With respect to the Landlord's claim against the Tenant's deposit, Section 38(1) of the *Act* requires the Landlord, within 15 days of the end of the tenancy or the date on which the Landlord receives the Tenant's forwarding address in writing, to either return the deposit in full or file an Application for Dispute Resolution seeking an Order allowing the Landlord to retain the deposit. If the Landlord fails to comply with Section 38(1), then the Landlord may not make a claim against the deposit, and the Landlord must pay double the deposit to the Tenant, pursuant to Section 38(6) of the *Act*.

Based on the consistent and undisputed evidence before me, the Landlord was never served with the Tenant's forwarding address in writing. As well, even if the Landlord had been provided with the Tenant's forwarding address in writing, the Landlord still made this Application within 15 days of the tenancy ending. Therefore, I find that the doubling provisions do not apply to the security deposit in this instance.

With respect to the Landlord's claims for damages, when establishing if monetary compensation is warranted, I find it important to note that Policy Guideline # 16 outlines that when a party is claiming for compensation, "It is up to the party who is claiming compensation to provide evidence to establish that compensation is due", that "the party who suffered the damage or loss can prove the amount of or value of the damage or loss", and that "the value of the damage or loss is established by the evidence provided."

Regarding the Landlord's claim for lost rent in the amount of \$712.50, there is no dispute that the tenancy was a month-to-month tenancy when the Tenant gave her notice in writing to end the tenancy on March 1, 2021 that was effective for March 31, 2021.

Sections 44 and 45 of the *Act* set out how tenancies end in this instance. The Tenant is required to provide the Landlord with one, whole month's written notice to end a month-to-month tenancy. As the Tenant's rent was due on the first of each month, the Tenant's written notice must have been deemed received no later than the last day of February to be effective for the end of March 2021. Given that the undisputed evidence is that the Tenant did not comply with the *Act* in ending the tenancy, I am satisfied that the Landlord is entitled to a monetary award in the amount of **\$712.50** to satisfy the Landlord's claim for only half the month of rent owing for April 2021.

As the Landlord was successful in her claim, I find that the Landlord is entitled to recover the \$100.00 filing fee paid for this Application. Under the offsetting provisions of Section 72 of the *Act*, I allow the Landlord to retain the security deposit in partial satisfaction of these debts.

Pursuant to Sections 38, 67, and 72 of the *Act*, I grant the Landlord a Monetary Order as follows:

**Calculation of total Monetary Award Payable by the Tenant to the Landlord**

Rental arrears for April 2021	\$712.50
Filing fee	\$100.00
Less security deposit	-\$712.50
<b>TOTAL MONETARY AWARD</b>	<b>\$100.00</b>

Conclusion

The Landlord is provided with a Monetary Order in the amount of **\$100.00** 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: August 31, 2021

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Residential Tenancy Branch