



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Lesca Holdings Ltd and [tenant  
name suppressed to protect privacy]

## **DECISION**

### **Dispute Codes**

Landlord: MNRL-S, FFL

Tenant: MNSDB-DR, FFT

### **Introduction**

This was a cross application hearing that dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a Monetary Order for the return of the security deposit and pet damage deposit (the "deposits"), pursuant to section 38; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72.

This hearing also dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a Monetary Order for unpaid rent, pursuant to section 67;
- authorization to retain the tenant's deposits, pursuant to section 38; and
- authorization to recover the filing fee for this application from the tenant, pursuant to section 72.

The landlord's agent (the "agent") and the tenant attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

Both parties were advised that Rule 6.11 of the Residential Tenancy Branch Rules of Procedure prohibits the recording of dispute resolution hearings. Both parties testified that they are not recording this dispute resolution hearing.

Both parties confirmed their email addresses for service of this decision and order.

### Issues to be Decided

1. Is the tenant entitled to a Monetary Order for the return of the deposits, pursuant to section 38 of the *Act*?
2. Is the tenant entitled to recover the filing fee for this application from the landlord, pursuant to section 72 of the *Act*?
3. Is the landlord entitled to a Monetary Order for unpaid rent, pursuant to section 67 of the *Act*?
4. Is the landlord entitled to retain the tenant's deposits, pursuant to section 38 of the *Act*?
5. Is the landlord entitled to recover the filing fee for this application from the tenants, pursuant to section 72 of the *Act*?

### Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of their respective submissions and arguments are reproduced here. The relevant and important aspects of the tenant's and landlord's claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on March 15, 2020 and ended on March 28, 2021. Monthly rent in the amount of \$2,835.00 was payable on the first day of each month. A security deposit of \$1,417.50 and a pet damage deposit of \$1,417.50 were paid by the tenant to the landlord. A written tenancy agreement was signed by both parties and a copy was submitted for this application.

The landlord applied for dispute resolution on April 5, 2021.

Both parties agree that this was a fixed term tenancy set to end on March 31, 2021 and that at the end of this time, the tenancy continued on a month-to-month basis. The tenancy agreement states in section 2:

This tenancy created by this agreement starts on 15 March 2020 and is for a fixed term ending on 31, March 2021. At the end of this time the tenancy will continue on a month-to-month basis, or another fixed length of time, unless the tenant gives notice to end tenancy at least one clear month before the end of the term.

Section 14 of the tenancy agreement states:

- 1) The tenant may end a monthly, weekly or other periodic tenancy by giving the landlord at least one month's written notice. A notice given the day before the rent is due in a given month ends the tenancy at the end of the following month. [For example] if the tenant wasn't to move at the end of May, the tenant must make sure the landlord receives written notice on or before April 30<sup>th</sup>.]

Both parties agree that on March 1, 2021 the tenant emailed the landlord a 30 day notice to end tenancy effective March 31, 2021. Both parties agree that on March 4, 2021 the tenant provided the landlord with a written letter which states:

As per our conversation on March 1, 2021, I will be moving out of [subject rental property] on March 31, 2021.

The March 4, 2021 letter also contained the tenant's forwarding address.

The agent testified that she started advertising the subject rental property for rent on March 1, 2021 but was not able to secure a tenant until May 1, 2021. The agent entered into evidence advertisements for the subject rental property dated May 1, 2021. The agent testified that the tenant is required to pay April 2021's rent because the tenant provided less than one month's notice as required in the tenancy agreement and a new tenant was not found for April 2021.

The tenant testified that she thought she was providing the landlord with the required notice to end tenancy. The tenant testified that she thought she was required to give the landlord 30 days' notice and that since March has 31 days, notice to end tenancy provided on March 1, 2021 was correct.

The tenant testified that she is seeking the return of her deposits less \$400.00 for damage done to a table. The agent testified that the landlord is not seeking the \$400.00 for the damage to the table.

### Analysis

Under section 7 of the *Act* a landlord or tenant who does not comply with the *Act*, the regulations or their tenancy agreement must compensate the affected party for the

resulting damage or loss; and the party who claims compensation must do whatever is reasonable to minimize the damage or loss.

Pursuant to Policy Guideline 16, damage or loss is not limited to physical property only, but also includes less tangible impacts such as loss of rental income that was to be received under a tenancy agreement.

Policy Guideline 5 states that where the landlord or tenant breaches a term of the tenancy agreement or the Residential Tenancy Act or the Manufactured Home Park Tenancy Act (the Legislation), the party claiming damages has a legal obligation to do whatever is reasonable to minimize the damage or loss. This duty is commonly known in the law as the duty to mitigate. This means that the victim of the breach must take reasonable steps to keep the loss as low as reasonably possible. The applicant will not be entitled to recover compensation for loss that could reasonably have been avoided. The duty to minimize the loss generally begins when the person entitled to claim damages becomes aware that damages are occurring.

Efforts to minimize the loss must be "reasonable" in the circumstances. What is reasonable may vary depending on such factors as where the rental unit or site is located and the nature of the rental unit or site. The party who suffers the loss need not do everything possible to minimize the loss, or incur excessive costs in the process of mitigation.

I find that the landlord mitigated its losses by immediately advertising the subject rental property for rent on March 1, 2021.

Section 45(2) of the *Act* states:

(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.

Residential tenancy Policy Guideline #3 states:

Where a tenant vacates or abandons the premises before a tenancy agreement has ended, the tenant must compensate the landlord for the damage or loss that results from their failure to comply with the legislation and tenancy agreement (section 7(1) of the RTA and the MHPTA). This can include the unpaid rent to the date the tenancy agreement ended and the rent the landlord would have been entitled to for the remainder of the term of the tenancy agreement.

I find that the tenant ended this tenancy less than one clear month before the end of the fixed term, contrary to section 45(2)(c) of the *Act* and contrary to section 14 of the tenancy agreement.

The earliest move out date that complies with section 45 of the *Act*, for notice to end tenancy given on March 1, 2021, is April 30, 2021. As stated in Residential Tenancy Policy Guideline #3, the tenant is responsible for unpaid rent up to the earliest date the tenancy could have ended under section 45 of the *Act* (April 30, 2021). I find that the tenant is responsible for April 2021's rent in the amount of \$2,835.00.

The tenant's misunderstanding about the notice to end tenancy required under the *Act* is unfortunate but does not absolve her of the requirements set out in section 45 of the *Act*.

Section 38(1) of the *Act* states that 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 the landlord made an application for dispute resolution claiming against the security deposit pursuant to section 38(1) of the *Act*.

Section 72(2) of the *Act* states that if the director orders a tenant to make a payment to the landlord, the amount may be deducted from any security deposit or pet damage deposit due to the tenant. I find that the landlord is entitled to retain the tenant's

deposits totalling \$2,835.00.

As the landlord was successful in this application, I find that the landlord is entitled to recover the \$100.00 filing fee from the tenant, pursuant to section 72 of the *Act*.

As the tenant was not successful in this application for dispute resolution, I find that the tenant is not entitled to recover the \$100.00 filing fee from the landlord, pursuant to section 72 of the *Act*.

### Conclusion

The landlord is entitled to retain all of the tenant's deposits in the amount of \$2,835.00.

I issue a Monetary Order to the landlord in the amount of \$100.00.

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: September 02, 2021

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Residential Tenancy Branch