



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNSDS-DR, FFT

### Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act"), for the return of the security deposit that she says the Landlord is holding without cause; and to recover the \$100.00 cost of her Application filing fee.

The Tenant and the Landlord appeared at the teleconference hearing and gave affirmed testimony. I explained the hearing process to the Parties and gave them an opportunity to ask questions about the hearing process. During the hearing the Tenant and the Landlord were given the opportunity to provide their evidence orally and to respond to the testimony of the other Party. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure ("Rules"); however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Neither Party raised any concerns regarding the service of the Application for Dispute Resolution or the documentary evidence. Both Parties said they had received the Application and/or the documentary evidence from the other Party and had reviewed it prior to the hearing.

### Preliminary and Procedural Matters

The Tenant provided the Parties' email addresses in the Application and they confirmed these addresses in the hearing. They also confirmed their understanding that the Decision would be emailed to both Parties and any Orders sent to the appropriate Party.

At the outset of the hearing, I advised the Parties that pursuant to Rule 7.4, I would only consider their written or documentary evidence to which they pointed or directed me in the hearing. I also advised the Parties that they are not allowed to record the hearing and that anyone who was recording it was required to stop immediately.

Issue(s) to be Decided

- Is the Tenant entitled to a Monetary Order, and if so, in what amount?
- Is the Tenant entitled to Recovery of the \$100.00 Application filing fee?

Background and Evidence

The Parties agreed that the fixed-term tenancy began on October 1, 2020 and was to run to March 31, 2021, with a monthly rent of \$2,000.00, due on the first day of each month. The Parties agreed that the Tenant paid the Landlord a security deposit of \$1,000.00, and no pet damage deposit. However, they also agreed that the Tenant never moved into the residential property.

The Tenant claims that the Landlord only returned \$800.00 of her \$1,000.00 security deposit. The Parties noted their agreement written onto the bottom of the tenancy agreement, which states that if the Landlord cannot rent out the rental unit for October 1, 2021, then the Landlord would keep the Tenant's \$1,000.00 security deposit.

The Landlord was able to rent the rental unit to another tenant starting on October 1, 2021. The Landlord said that he returned the full \$1,000.00 to the Tenant; however, the Tenant said he only returned \$800.00, because the new tenant is only paying \$1,800.00 per month, instead of the \$2,000.00 that the Tenant agreed to pay per month.

In the hearing, the Landlord said:

I guess I will start from the beginning. She intended to rent the unit, and was going to start on October 1<sup>st</sup>. She had given me her security deposit on August 30<sup>th</sup>. A few days after that she changed her mind. I said that's fine, but we need to have in writing that her security deposit was returned to her in full. I have no legal obligation to her, anymore.

She wrote the letter herself, that she had received the full amount back. I have also submitted [the Tenant's] tenancy agreement and the new tenant's agreement whose occupation started on October 1<sup>st</sup>.

I have no reason to keep her deposit.

[The Tenant] failed to provide me with the evidence. Failed to provide evidence for the second time. This is the second hearing. Please take that into

consideration that I have had due diligence. I paid her in full \$1,000.00, in full, what was received from her to me. I returned that on September 5<sup>th</sup>.

The Landlord submitted a handwritten note stating:

[Tenant], I deposit the \$1,000 [rental unit address]  
Landlord give back my \$1,000 and date: September 05, 2020

\_\_\_\_\_[Tenant's signature]  
[Tenant's name printed]

The Tenant acknowledged in the hearing that she wrote this note.

The Landlord submitted a copy of another tenancy agreement that he said was with the new tenant of the rental unit. This agreement indicates that the new tenant pays the Landlord \$2,000.00 a month in rent.

The Tenant said:

He said 'I can only return to you \$800.00'. I said that will be good enough. He said he already lost the money. I understood that if he couldn't rent in October, I lose the money. But he said meet me on September 5 in the laneway. I said I'm really very sick. He gave me a piece of paper and that I deposited the \$1000, for [rental unit address].

When I counted the money it's only \$800.00, because that's what we agreed on. I was shaking and I said 'when can you give me the other \$200.00?' I had the copy – I called to him and went back to that area – I asked the renter and he said he started to rent on October 1<sup>st</sup>. I even emailed the Landlord's son and I'm begging him, because the \$200.00 is very important to me. I'm the one who wrote that, but I only received \$800.00. Being dishonest, I don't do that.

### Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on a balance of probabilities, I find the following.

The burden of proof in this administrative hearing is set out in Rule 6.6:

### **Rule 6.6 The standard of proof and onus of proof**

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed.

The onus to prove their case is on the person making the claim. In most circumstances this is the person making the application. However, in some situations the arbitrator may determine the onus of proof is on the other party. For example, the landlord must prove the reason they wish to end the tenancy when the tenant applies to cancel a Notice to End Tenancy.

I find that the burden of proof is on the Tenant in this matter. She must satisfy me that what she says is true on a balance of probabilities. I have before me a “she said/he said” situation. The Tenant acknowledged that she signed a note stating that she had received her \$1,000.00 security deposit back from the Landlord. I find this is the only documentary evidence of what occurred.

If I am uncertain as to whether the Tenant has provided sufficient evidence to make her case, then she has not made her case. I find on a balance of probabilities that there is insufficient evidence before me to grant the Tenant the monetary order that she seeks in her Application. Accordingly, I dismiss the Tenant’s Application wholly, without leave to reapply.

### Conclusion

The Tenant is unsuccessful in her Application, because she did not provide sufficient evidence to prove her case on a balance of probabilities. The Tenant’s Application is dismissed wholly, without leave to reapply.

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 08, 2021

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Residential Tenancy Branch