



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDCT, FFT

### Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Tenant on May 02, 2021 (the “Application”). The Tenant applies as follows:

- For compensation for monetary loss or other money owed
- To recover the filing fee

J.H.P. and C.P. (the “Agents”) appeared as agents for the Tenant. The Landlord appeared with A.R. to assist. I explained the hearing process to the parties who did not have questions when asked. I told the parties they were not allowed to record the hearing pursuant to the Rules of Procedure (the “Rules”). The parties provided affirmed testimony.

The Landlord provided their full legal name which is reflected in the style of cause.

Both parties submitted evidence prior to the hearing. I confirmed service of the hearing package and evidence and no issues arose.

The parties were given an opportunity to present relevant evidence and make relevant submissions. I have considered all oral testimony of the parties and the documentary evidence referred to during the hearing. I have only referred to the evidence I find relevant in this decision.

### Issues to be Decided

1. Is the Tenant entitled to compensation for monetary loss or other money owed?
2. Is the Tenant entitled to recover the filing fee?

### Background and Evidence

The first two pages of a written tenancy agreement were submitted as evidence and the parties agreed they are accurate. The tenancy started June 01, 2018 and was for a fixed term ending May 31, 2019. The parties agreed the tenancy then became a month-to-month tenancy. Rent was \$2,800.00 per month due on the first day of each month. The parties agreed the Tenant paid a \$2,800.00 security deposit.

The parties agreed the tenancy ended September 30, 2020.

The Tenant seeks \$2,800.00 for one month's overpaid rent.

The Agents confirmed the following. Rent payments during the tenancy were set up so that they were automatically transferred from the Tenant's bank account to the Landlord's bank account. The automatic payments were not cancelled by the Tenant until after October 28, 2020. Rent payments were made to the Landlord September 28, 2020 and October 28, 2020. The Landlord returned one of the payments on November 24, 2020. The Tenant is seeking the second payment made October 28, 2020 back.

The Landlord acknowledged the Tenant gave proper notice ending the tenancy for September 30, 2020. The Landlord testified about issues with the rental unit such as how many people were living in it and the condition of the rental unit at the end of the tenancy. The Landlord testified that they sent correspondence to the Tenant outlining the cost associated with the issues in the rental unit, advising the Tenant that they would keep the security deposit and advising the Tenant that the actual cost of the damages was more. The Landlord testified that the amounts sent to the Tenant were \$3,600.00 and \$5,527.00. The Landlord had not submitted documentary evidence of the correspondence referred to. The Landlord testified that they received no response from the Tenant. The Landlord testified that they later received the \$2,800.00 and assumed it was for the costs outlined in their correspondence. The Landlord testified that they kept the \$2,800.00 for damages to the rental unit.

I asked the Landlord if they received the September 28, 2020 and October 28, 2020 payments and returned one November 24, 2020 as shown in the Tenant's documentary evidence and the Landlord testified that they had.

In reply, the Agents for the Tenant testified that the \$2,800.00 payments were for rent and not for damages to the rental unit. The Agents testified that the Landlord only said

they would keep the security deposit for the damages and referred to an email in evidence. The Agents testified that the \$2,800.00 payments were accidental rent payments and that they told the Landlord this from the start.

At the end of the hearing, once I had confirmed that the parties did not have further submissions, the Landlord testified that they do not even know if they received the additional \$2,800.00 payment from the Tenant.

### Analysis

Section 26 of the *Act* states:

26 (1) A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

Section 7 of the *Act* states:

7 (1) If a landlord...does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord...must compensate the [tenant] for damage or loss that results.

(2) A...tenant who claims compensation for damage or loss that results from the [landlord's] non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Policy Guideline 16 deals with compensation for damage or loss and states in part the following:

It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. In order 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.

Pursuant to rule 6.6 of the Rules, it is the Tenant as applicant who has the onus to prove the claim. The standard of proof is on a balance of probabilities meaning it is more likely than not the facts occurred as claimed.

I accept that payments of \$2,800.00 were made automatically from the Tenant's bank account to the Landlord's bank account on September 28, 2020 and October 28, 2020 because the Tenant submitted bank records showing this. The Landlord did not submit bank records or other compelling evidence to support that these payments were not made.

I accept the testimony of the Agents for the Tenant that the \$2,800.00 payments were accidental rent payments for the following reasons. Rent was \$2,800.00, the same amount. The bank records show the payments were pre-authorized transfers. The payments were both made on the 28<sup>th</sup> of each month.

I find that the position of the Landlord that they thought one of the payments was for monies owing further to their correspondence to the Tenant about damages does not make sense. The Landlord acknowledged the Tenant did not reply to their correspondence about damages. Further, the amount transferred was the same amount as rent and did not line up with either of the amounts outlined by the Landlord in their correspondence about damages. In the circumstances, it does not make sense to assume that the payment was for damages and not a second accidental rent payment.

The Tenant was not responsible for paying rent after the tenancy ended September 30, 2020. I find the Landlord breached the tenancy agreement by accepting automatic rent payments for two months after the tenancy was over. I find the Tenant suffered loss of \$2,800.00 due to the Landlord's breach. I find the Landlord must return the \$2,800.00 to the Tenant.

I note that I do not find the issues with the rental unit relevant. The payment was for rent and the Tenant did not owe for rent. The Landlord must return the rent payment. If the Landlord believed they were owed money at the end of the tenancy due to issues with the rental unit, the Landlord should have filed an Application for Dispute Resolution

with the RTB seeking compensation. The Landlord should not have kept the accidental rent payment.

Given the Tenant was successful in the Application, I award the Tenant reimbursement for the \$100.00 filing fee pursuant to section 72(1) of the *Act*.

In total, the Tenant is owed \$2,900.00 and I issue the Tenant a Monetary Order in this amount pursuant to section 67 of the *Act*.

### Conclusion

The Tenant is awarded \$2,900.00 and is issued a Monetary Order in this amount. This Order must be served on the Landlord. If the Landlord fails to comply with this Order, it 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 *Act*.

Dated: November 01, 2021

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Residential Tenancy Branch