



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

### Dispute Codes

For the tenant: MNSD FFT  
For the landlord: MNRL-S MNDCL-S FFL

### Introduction

This hearing was convened as a result of an Application for Dispute Resolution (application) by both parties seeking remedy under the *Residential Tenancy Act* (Act). The tenants applied for a monetary order for \$1,600.00 for the return of double their security deposit, for \$500.00 for an unspecified reason, and for the filing fee. The landlord applied for a monetary order of \$1,500.00, for \$1,000.00 for unpaid April 2021 rent plus \$400.00 in unpaid utilities, to keep all or part of the tenant's security deposit towards any amount owing and to recover the cost of the filing fee.

The landlord and the tenant attended the teleconference hearing as scheduled. The hearing process was explained to the parties and an opportunity was given to ask questions about the hearing process. Thereafter the parties gave affirmed testimony, were provided the opportunity to present their evidence orally and in documentary form prior to the hearing and make submissions to me. I have reviewed all evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this decision.

The parties confirmed that they received the documentary evidence from the other party prior to the hearing and that they had the opportunity to review that documentary evidence. As a result, I find the parties were sufficiently served in accordance with the Act.

### Preliminary and Procedural Matters

The parties were informed at the start of the hearing that recording of the dispute resolution is prohibited under the Residential Tenancy Branch (RTB) Rules of Procedure (Rules) Rule 6.11. The parties were also informed that if any recording devices were being used, they were directed to immediately cease the recording of the hearing. In addition, the parties were informed that if any recording was surreptitiously made and used for any purpose, they will be referred to the RTB Compliance Enforcement Unit for the purpose of an investigation under the Act. Neither party had any questions about my direction pursuant to RTB Rule 6.11.

In addition, the parties confirmed their respective email addresses at the outset of the hearing and stated that they understood that the decision and any applicable orders would be emailed to them.

The tenant was advised at the outset of the hearing that their claim for \$500.00 for “compensation” was too vague and was dismissed without leave to reapply as the tenant failed to specify what the \$500.00 claim was for. As a result, I find the tenant’s claim to be \$1,100.00 total, which is \$1,000.00 for double the \$500.00 security deposit plus the \$100.00 filing fee.

### Issues to be Decided

- Is either party entitled to a monetary order under the Act, and if so, in what amount?
- Is either party entitled to the recovery of the cost of the filing fee?

### Background and Evidence

Neither party submitted a copy of the tenancy agreement. While both parties claim there was a written tenancy agreement, the landlord stated that they lost their copy and the tenant stated that the landlord never provided them with a copy of the tenancy agreement.

The parties agreed that the tenancy began on December 4, 2020. The parties also agreed that the tenant vacated the rental unit on March 24, 2021 and returned the rental unit keys on that date. The tenant testified that the tenancy was a month-to-month tenancy, whereas the landlord testified that the tenancy was a fixed-term tenancy until June 2021. The parties also agreed that monthly rent was \$1,000.00 per month.

There was no agreement on whether utilities were included in the monthly rent during the hearing.

*Landlord's claim*

The landlord stated that the tenant provided their written notice on March 24, 2021 that they would be vacating the rental unit on March 31, 2021 and returned the rental unit keys on March 24, 2021. The landlord stated that the tenant violated the Act by failing to provide proper notice under the Act and owes April 2021 rent of \$1,000.00 which was due April 1, 2021. The landlord testified that they could not secure a new tenant for April 2021.

The landlord has claimed \$400.00 for unpaid utilities, which I will address later in this decision due to a lack of a tenancy agreement to support whether or not utilities were included in the monthly rent.

*Tenant's claim*

The tenant is seeking the return of double their security deposit of \$500.00 for a total monetary claim of \$1,000.00 plus the \$100.00 filing fee.

The landlord confirmed that they received the March 24, 2021 letter from the tenant, which included the tenant's written forwarding address. The landlord admitted that for personal reasons, the landlord was not focussed and did not claim against the tenant's security deposit until September 15, 2021.

The tenant testified that the landlord has not returned any amount of the tenant's \$500.00 security deposit. The landlord confirmed that they have not returned any portion of the tenant's security deposit to date.

*Analysis*

Based on the documentary evidence, testimony, and on the balance of probabilities, I find the following.

**Tenant's claim for double their security deposit** – Section 38 of the Act, requires that a landlord must return or make a claim against the security deposit within 15 days of the

later of the end of tenancy date and the date the written forwarding address is provided by the tenant to the landlord. The tenancy ended on March 24, 2021, when the tenant vacated the rental unit. That date was also the same date the tenant provided their written forwarding address to the landlord.

The landlord did not file their application until September 15, 2021, claiming towards the tenant's security deposit which I find it beyond the 15-day timeline under section 38 of the Act, which required the landlord either return the full security deposit of \$500.00 or file their claim by April 8, 2021. Therefore, I find the landlord failed to comply with section 38 of the Act by waiting until September 15, 2021 to file their claim. As a result, I find the tenant is entitled to the return of double their original security deposit of \$500.00 under the Act, which equals **\$1,000.00**. Therefore, the tenant's application is successful and I grant the tenant \$1,000.00 as claimed.

**Landlord's claim for loss of April 2021 rent** - The landlord has claimed \$1,000.00 for unpaid rent for April 2021 as the tenant failed to provide proper notice under the Act. I find the tenancy was a month-to-month tenancy as I find the landlord has failed to provide a copy of the written tenancy agreement to support that the tenancy was a fixed-term tenancy. Therefore, section 45(1) of the Act applies and states:

**Tenant's notice**

**45(1) A tenant may end a periodic 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, and**

**(b) 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.**

[emphasis added]

Given the above, I find the earliest the tenant could have ended the tenancy would have been April 30, 2021, by giving written notice on March 24, 2021. Therefore, I find the tenant breached section 45(1) of the Act and owes the landlord **\$1,000.00** for unpaid April 2021 rent as a result. Therefore, this portion of the landlord's application is successful, and I grant the landlord \$1,000.00 as claimed for this portion of their claim.

I dismiss the landlord's claim for \$400.00 in unpaid utilities due to insufficient evidence by failing to provide a copy of a tenancy agreement that requires payment of utilities on top of the monthly rent. I do not grant the landlord liberty to reapply as a result.

I do not grant either party the filing fee as I find that both claims offset each other. In addition, I do not grant either party a monetary order as I find that both amounts of \$1,000.00 for each party also offsets each other.

**I caution** the landlord to comply with section 38 of the Act in the future.

**I caution** the tenant to comply with section 45(1) of the Act in the future.

### Conclusion

Both applications offset one another and as a result no monetary order is granted to either party.

This decision will be emailed to both parties.

Both parties have been cautioned as noted above.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: November 26, 2021

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Residential Tenancy Branch