



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDCL-S, MNSDS-DR, FFT

### Introduction

This hearing was convened in response to an application by the Landlord and an application by the Tenant pursuant to the *Residential Tenancy Act* (the “Act”).

The Landlord applied on June 30, 2021 for:

1. A Monetary Order for compensation - Section 67; and
2. An Order to retain the security deposit - Section 38.

The Tenant applied on January 18, 2022 for:

1. An Order for the return of the security deposit - Section 38; and
2. An Order to recover the filing fee - Section 72.

The Parties were each given full opportunity under oath to be heard, to present evidence and to make submissions. It is noted that the two differently named Tenants are the same person.

### Issue(s) to be Decided

Is the Landlord entitled to the compensation claimed?

Is the Landlord entitled to retain the security deposit?

Is the Tenant entitled to recovery of the filing fee?

### Background and Evidence

The following are agreed or undisputed facts: the tenancy under written agreement started on November 28, 2020 on a fixed term to end May 28, 2021. The tenancy agreement does not include any liquidated damage clause in the event the Tenant ends the fixed term early. Rent of \$1,100.00 was payable on the first day of each month. At the outset of the tenancy the Landlord collected \$550.00 as a security deposit. On February 18, 2021 the Tenant informed the Landlord that the tenancy would end and offered to find a sublet for the remaining 2.5 months on the fixed term. The Landlord informed the Tenant that they would find a new tenant. The Tenant moved out of the unit on March 14, 2021. The Tenant paid \$550.00 for March 2021 rent. The Tenant sent their forwarding address to the Landlord by registered mail on June 27, 2021 and the Landlord received that mail late June 2021 prior to the Landlord making their application. Upon receipt of the Tenant's notice to end the tenancy, the Landlord immediately advertised the unit and starting showings while the Tenant was still in the unit.

The Tenant states that prior to sending their forwarding address in June 2021 the Tenant had provided the forwarding address to the Landlord on May 7, 2021 by email. The Tenant confirms that there was no address provided to the Landlord in that email other than the Tenant's email address for an etransfer of the return the security deposit.

The Landlord states that they advertised the unit for the same rental rate and obtained a new tenant for April 2, 2021. The Landlord claims \$550.00 in compensation for lost rent caused by the Tenant's breach of the fixed term tenancy.

The Tenant states that a prospective tenant informed the Tenant during a showing that the Landlord was seeking more rent than was being paid by the Tenant. This prospective tenant asked the Tenant to negotiate on their behalf with the Landlord to reduce the rent being sought. The Tenant told this person to speak directly to the Landlord. This person did not enter into a tenancy agreement with the Landlord.

The Landlord confirms that they provided no supporting evidence of the advertising of the unit. The Landlord refers to a copy of parts of the next tenancy agreement provided for this hearing and it was noted during the hearing that this digital document is not legible and cannot be read by the Arbitrator.

### Analysis

Section 7 of the Act provides that where a tenant does not comply with the Act, regulation or tenancy agreement, the tenant must compensate the landlord for damage or loss that results. This section further provides that where a landlord or tenant claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement the claiming party must do whatever is reasonable to minimize the damage or loss. It is undisputed that the Tenant breached the fixed term tenancy. While the Tenant's testimony of the Landlord seeking a new tenancy with a higher amount of rent payable is not supported, neither is the Landlord's testimony that they were seeking the same rental rate as being paid by the Tenant. As the Landlord bears the burden of proof, I find that the Landlord has not sufficiently substantiated that it took steps to reduce the lost rental income caused by the Tenant's breach. For this reason, I find that the Landlord has not substantiated an entitlement to the \$550.00 claimed as lost rental income. As this is the only claim in the Landlord's application, I dismiss the application.

Section 38 of the Act provides that within 15 days after the later of the date the tenancy ends, and the date the landlord receives the tenant's forwarding address in writing, the landlord must repay the security deposit or make an application for dispute resolution claiming against the security deposit. Where a landlord fails to comply with this section, the landlord must pay the tenant double the amount of the security deposit. Given the Tenant's evidence that the email of May 7, 2021 did not contain a forwarding address and as an email address cannot be considered a forwarding address, I find that the Landlord did not receive the Tenant's forwarding address until it was sent by registered

mail on June 22, 2021. As the Landlord made their application to retain the security deposit within 15 days of this date, I find that the Landlord is not required to return double the security deposit. As the Landlord has not been successful with its claim to retain the security deposit, I order the Landlord to return the security deposit of **\$550.00** plus zero interest to the Tenant forthwith.

As the Tenant's claim for return of the security deposit has been successful, I find that the Tenant is also entitled to recovery of the **\$100.00** filing fee for a total entitlement of **\$650.00**. I make this order in the Tenant's name as contained in the Tenant's application.

#### Conclusion

The Landlord's application is dismissed.

I grant the Tenant an order under Section 67 of the Act for **\$650.00**. If necessary, this order may be filed in the Small Claims 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: January 19, 2022

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Residential Tenancy Branch