



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Skyline Real Estate Holdings  
Inc. and [tenant name suppressed to protect privacy]

## **DECISION**

### Dispute Codes

MNRL-S, MNDCL-S, FFL

### Introduction

This hearing was convened as a result of the Landlord's Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act"), for a monetary order for unpaid rent of \$1,500.00; a monetary order of \$50.00 for damage or compensation for damage under the Act, retaining the security deposit to apply to these claims; and to recover the \$100.00 cost of their Application filing fee.

The Tenant and an agent for the Landlord, S.D. ("Agent"), 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 it. During the hearing the Tenant and the Agent 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.

When we reviewed service of the Notice of Hearing and evidentiary submissions, the Tenant denied having received them. However, the Agent said that she sent these documents to the Tenant via registered mail sent on July 23, 2021. The Agent said that she mailed the package to the forwarding address the Tenant said she gave the Landlord on May 31, 2021, when she moved out. The Landlord provided the registered mail tracking number for this package, and when I searched the Canada Post for package tracking details, it indicated that two pick-up notices were left for the Tenant; however, the registered mail was never picked up by the Tenant. She said she knew about the hearing from a reminder sent by the RTB.

Based on the evidence before me on a balance of probabilities, I find that the Tenant

has the opportunity to pick up the registered mail package that the Landlord sent her, but that she chose not to pick it up. According to RTB Policy Guideline 12, "Where the Registered Mail is refused or deliberately not picked up, receipt continues to be deemed to have occurred on the fifth day after mailing." Accordingly, I find the Landlord served the Notice of Hearing to the Tenant on July 28, 2021, in compliance with the Rules.

### Preliminary and Procedural Matters

The Landlord provided the Parties' email addresses in the Application and they confirmed these 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 Landlord entitled to a monetary order, and if so, in what amount?
- Is the Landlord entitled to recovery of the Application filing fee?

### Background and Evidence

The Parties agreed that the fixed-term tenancy began on June 1, 2020, with a monthly rent of \$1,500.00, due on the first day of each month. The Parties agreed that the Tenant paid the Landlord a security deposit of \$750.00, and no pet damage deposit. The Agent said that the Landlord retained the Tenant's security deposit and has applied it to the claims in their Application.

In the hearing, the Agent explained that the Landlord claims compensation from the Tenant, because the Tenant did not give sufficient notice of her intention to end the tenancy. The Agent said that the Tenant provided the Landlord with notice that she would be ending the tenancy on May 31, 2021, and that the Tenant notified the Landlord of this intention on May 4, 2021. The Tenant confirmed this was what happened.

The Agent said that given the date on which the Tenant served the Landlord with her notice to end their tenancy, the effective vacancy date of the notice was June 30, 2021. As such, the Landlord tried to cash the Tenant's pre-dated cheque for June 1, 2021. However, the Agent said that the Tenant's rent cheque for June was returned due to insufficient funds ("NSF").

The Tenant said:

On May 4, I submitted that I would be moving out at the end of May. [The Landlord's representative] said I had to give my notice a month before. She said to give proper notice or sign over my security deposit, which I did. The form said I was giving notice for the end of June and she was going to keep my security deposit, so when I did the inspection at end of the month, I forfeited my security deposit and then I moved out on May 31.

I never heard anything from [the Landlord], and then the next month money is being taken out of my account. I said to stop taking old rent that shouldn't be coming out. She said she would correct that and she did. That's why there's NSF charges for June's rent.

I was unaware that I needed to give 30 days notice. Nobody told me I needed to do that, so I notified them on the 4<sup>th</sup> of May. I had to resubmit that I was moving out. I forfeited my security deposit.

The Agent said:

She signed off the security deposit, but we're still waiting for the other half. We are also looking for fees for the NSF from March 2, the other half of June's rent, and the bank fee for the June NSF; but I'll waive the second one, taking her word that she was told it wouldn't be applied. So that's one NSF, and the security deposit, and the filing fee. She did sign off the security deposit, but it does not make up for the month's rent.

The Tenant said:

When I left, I spent eight hours cleaning. We had a good, good conversation, I walked off that that was a good year. [The representative] said 'You've been a great tenant'. There was no issue, there was no problem.

The Agent said:

I want to say that there was no problem with the inspection. We're not holding the security deposit for any kind of damage. We couldn't get a tenant in - we got one in for July 1, because legally that is when it was ready to go.

We're claiming the security deposit, half a month's rent, one NSF charge for March 2, 2021, and one filing fee.

The Tenant said:

I'd like to say that if communication had been better, the decision I would have made would have been different, so I didn't lose out on a full month in June. I would have stayed for an extra month in June, instead of two months. [The representative] gave me two options and she said you can a) give proper notice or b) proper notice, but leave at the end of June. She never said anything about paying the other \$750.00. I went to the office... My mom is a realtor, and she has five properties and talks to tenants all the time. She said that number two was the best option and to sign over my security deposit and move out at end of May, and that would be the end of it. That's how I see it. She never once said I owe \$750.00 for rent, nothing about NSF fees, so a year later I'm dealing with something that should have been dealt with at the time.

### Analysis

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

The Tenant said that no one told her that she had to give a month's notice to end a tenancy. The Tenant should have given the Landlord proper notice, which was received (or deemed served) by the Landlord by April 30, 2021, or earlier, according to the Act, and as set out further below.

Tenants are responsible for understanding the rules surrounding tenancy matters set out in the legislation and policy guidelines. The Tenant could have called the RTB in order to find out what she had to do to end the tenancy properly; however, I infer from her comments that she expected the Landlord to tell her about her rights and obligations under the Act.

Rule 6.6 sets out that the person making the claim bears the onus of proving their case on a balance of probabilities. In order to do so, a claimant must present sufficient evidence at the hearing to support their claim, meeting this standard of proof. As such, I find that the burden of proof in this matter is on the Landlord.

Section 7 of the Act states that if a party does not comply with the Act, regulation or tenancy agreement, the non-complying party must compensate the other for the damage or loss that results. Policy Guideline #16 sets out that damage or loss is not limited to physical property only, but also includes less tangible costs, such as loss of rental income that was owing under a tenancy agreement.

Policy Guideline #3 states that an award of damages is intended to put the affected party in the same position, as if the other party had not breached the Act, regulation, or tenancy agreement. In the case of breaching a fixed term tenancy agreement, this includes compensating the landlord for any loss of rent up to the earliest time that the tenant could legally have ended the tenancy.

Policy Guideline #5 states that where a party breaches a term of the tenancy agreement or the Act or regulation, the party claiming damages has a legal obligation to do whatever is reasonable to minimize the damage or loss. 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 reimbursed for a 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.

### Unpaid Rent Owing

Section 45 (2) of the Act states that a tenant may end a fixed term 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. [emphasis added]

In this case, I find that the Parties had agreed via the tenancy agreement that the tenancy was for a fixed term running from June 1, 2020, to May 31, 2021. They had agreed that the tenancy would then be operated on a periodic or month-to-month basis – that it would continue past May 31, 2021, unless ended in accordance with the Act.

I find that the Tenant ended the one-year, fixed term tenancy, contrary to section 45 (2) of the Act and the tenancy agreement. I find that this breach deprived the Landlord of \$1,500.00 in rental income for June 2021, since the effective date of the Tenant's May 4, 2021, notice pursuant to the Act was June 30, 2021.

Pursuant to sections 7 and 67 of the Act, I find that the Tenant is required to compensate the Landlord for this loss of rental income to the effective vacancy date of the notice that the Tenant did give the Landlord.

However, the Landlord also had a duty to minimize that loss by re-renting the unit as soon as possible. I find that the Landlord to find a new tenant for July 1, 2021, because the Tenant's tenancy did not officially end until June 30, 2021. As a result, I find that the Landlord found a new tenant as soon as possible for the rental unit, and therefore, I do not decrease the Landlord's claim for recovering rental income from the Tenant, due to a failure on the Landlord's part to minimize the damage.

Based on the undisputed evidence before me overall, I find that the Landlord is entitled to recovery of one month's rental income at **\$1,500.00** for June 2021.

The Landlord also claimed, and the Tenant did not dispute that she paid her rent late in March 2021, which resulted in the Landlord having to pay an NSF fee to the bank of \$25.00. The Landlord had originally also claimed an NSF fee for the insufficient funds in the Tenant's account to pay the June rent in full. However, in the hearing, the Agent agreed to waive this claim, given what the Tenant said she was told by the Landlord's representative at the time.

Accordingly, I award the Landlord with recovery of **\$25.00** from the Tenant for the NSF fee from the bank for March 2021, pursuant to section 7 (1) (d) of the *Residential Tenancy Act* Regulation.

Given the Landlord's success in this matter, I also award them with recovery of the **\$100.00** Application filing fee from the Tenant, pursuant to section 72 of the Act.

### Summary and Offset

I find that this claim meets the criteria under section 72 (2) (b) of the Act to be offset against the Tenant's security deposit of \$750.00 in partial satisfaction of the Landlord's monetary award.

<u>Claim</u>	<u>Award</u>
June 2021 rent	\$1,500.00
March 2021 NSF fee	\$ 25.00
Application filing fee	<u>\$ 100.00</u>
<b>Sub-total</b>	\$1,625.00
Less security deposit	<u>(\$750.00)</u>
<b>TOTAL</b>	<b><u>\$ 875.00</u></b>

The Landlord is awarded **\$1,625.00** from the Tenant for this claim, and is authorized to retain the Tenant's **\$750.00** security deposit in partial satisfaction of this claim, pursuant to section 72 of the Act.

I grant the Landlord a **Monetary Order** from the Tenant of **\$875.00** in complete satisfaction of their monetary awards.

In the hearing, the Agent said the Landlord is open to allowing the Tenant to pay this Monetary Order via a payment plan. As such, I encourage the Parties to work out such a plan to reduce the impact on the Tenant's financial situation, and compensate the Landlord, as owed.

### Conclusion

The Landlord is successful in their Application, as they provided sufficient evidence to prove their claims on a balance of probabilities. The Landlord is awarded \$1,500.00 rent for June 2021, as the Tenant provided insufficient notice to end the tenancy on May 31, 2021. The Landlord is also awarded recovery of a \$25.00 bank fee for returning the Tenant's March 2021 rent cheque for insufficient funds. Finally, the Landlord is awarded recovery of the \$100.00 Application filing fee, for a total award of **\$1,625.00** from the Tenant.

The Landlord is authorized to retain the Tenant's **\$750.00** security deposit in partial satisfaction of this award. The Landlord is granted a **Monetary Order** of **\$875.00** for the remainder of the award owed by the Tenant to the Landlord.

This Order must be served on the Tenant by the Landlord and may be filed in the Provincial Court (Small Claims) and enforced as an Order of that Court.

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: February 03, 2022

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Residential Tenancy Branch