



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

### Dispute Codes

Parties	File No.	Codes:
(Landlord) R.E.	310045213	MNRL-S, FFL
(Tenant) D.F.	310046942	MNSD, FFT

### Introduction

This hearing dealt with cross applications for Dispute Resolution under the *Residential Tenancy Act* ("Act") by the Parties.

The Landlord filed a claim for:

- \$2,650.00 compensation for unpaid rent – holding the security deposit; and
- recovery of her \$100.00 application filing fee.

The Tenant filed a claim for:

- \$1,325.00 for the return of the security deposit; and
- recovery of her \$100.00 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 it. During the hearing the Tenant and the Landlord were given the opportunity to provide their evidence orally and 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 Parties provided their email addresses in their applications, 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 Landlord entitled to a Monetary Order, and if so, in what amount?
- Is the Tenant entitled to a Monetary Order, and if so, in what amount?
- Is either Party entitled to Recovery of their \$100.00 Application filing fee?

### Background and Evidence

The Parties agreed that the periodic tenancy was to begin on August 1, 2021, with a monthly rent of \$2,650.00, due on the first day of each month. The Parties agreed that the Tenant paid the Landlord a security deposit of \$1,325.00, and no pet damage deposit. However, they also agreed that they never signed a tenancy agreement, and that the Tenant never moved in.

An issue before me is whether the Parties entered into a verbal tenancy agreement, and if so, what that implies.

The Parties provided texts and emails they had exchanged, but unfortunately, most of the texts are undated. However, in the first text submitted by the Landlord, the Tenant comments on her interest in buying a fireplace for the alcove in the rental unit living room. She says she will purchase it after confirming the dimensions in this area of the rental unit.

In a text the Landlord labelled, "dispute\_2a", the Landlord asked the Tenant, "Are you officially with us? August 1? I would like to let anyone else interested that it's gone if you are 'in'." Later she states: "not to get too far ahead of ourselves – more to discuss re painting and moving things when you are confirmed. You will have the month to get it done before moving in...."

In a text the Landlord submitted and labelled "dispute\_3a", the Tenant said to the Landlord:

I can forward you monies via e-transfer if you wish or I can come by on Wednesday at a convenient time for you to sign all of the above. I will pay for August but not move in until September. You and I can chat about any changes to be made I so value your openness....

The Tenant submitted a copy of a cheque dated June 30, 2021, for \$1,325.00 that she wrote to the Landlord, which was for the amount of the security deposit. The Tenant included a copy of the back of the cheque showing that it was cashed. In her attached comments, the Tenant said that this cheque was paid to provide the Landlord with the security deposit for the rental unit.

In this commentary, the Tenant explained the following:

In the summer of 2021, I was informed by my landlord at that time that I needed to find a new home due to the sale of my place. On June 30<sup>th</sup>, 2021, I provided a damage deposit to Landlord [R.E.], to reside at location [residential property address] for an August 1<sup>st</sup> occupancy. The agreement was [R.] would remove certain items from the suite and allow me to place an electric fireplace in the living room (all agreements were witnessed by my friend [K.W.]). Following this arrangement, I visited the suite on the evening of July 20<sup>th</sup>. Her brother and sister-in-law were staying in the suite at that moment. It was my first time visiting the suite at night time and I did not feel comfortable there. Also, I noticed no changes had been made and in the interim Ms. [E.] informed me I could not have an electric fireplace in the suite due to electrical issues. **At this point I had never seen or signed a lease.** I informed [R.] the following day, July 21<sup>st</sup> by text ... and by email (please see attached) that I would not be moving in. I felt very bad and explained to Ms. [E.]. She was not very happy. I wished her well in finding a new tenant. She had shared that she had received many applicants interested in the suite for August 1<sup>st</sup>. I was on all sites looking for a new home and NEVER saw her add reappear. I found that to be quite interesting. Ms. [E.] cashed my cheque on July 22<sup>nd</sup>, the day after I informed her I would not be

moving in. Ms. [E.] replied to my email by text indicating she would give me a check but I needed to come by her residence to pick up (See evidence) Then I received an email informing me she was placing an application to RTB. .

[emphasis in original]

The Tenant submitted an email she received from the Landlord stating:

I think you are quite a different person than you presented which is sad.  
You have cost me a month's rent AND you still want the damage deposit back.  
I cancelled and did not show to several people. How said is this?  
Look through your texts – you committed to renting the space in various texts,  
but what you did not do is keep your word.  
Please file if you can live with this thinking.  
We will go from there.  
[R]

In the hearing, the Landlord said that she contacted the applicants who had wanted to move in; however, she found that all had found other places to live in the meantime. Essentially, the Landlord had a week to find a new tenant for August 1, 2021.

### Analysis

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

Before the Parties testified, I advised them of how I analyze evidence presented to me. I told them that a party who applies for compensation against another party has the burden of proving their claim on a balance of probabilities. Policy Guideline 16 sets out a four-part test that an applicant must prove in establishing a monetary claim. In this case, each party, as applicant, must prove:

1. That the Other Party violated the Act, regulations, or tenancy agreement;
2. That the violation caused you to incur damages or loss as a result of the violation;
3. The value of the loss; and,  
That you did what was reasonable to minimize the damage or loss. .

("Test")

As set out in Policy Guideline #16 ("PG #16"), "The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. It is up to the party claiming compensation to provide evidence to establish that compensation is due."

I find that the following sections of the Act apply to this situation.

### **Tenancy agreements include the standard terms**

**12** The standard terms are terms of every tenancy agreement

(a) whether the tenancy agreement was entered into on or before, or after, January 1, 2004, and

(b) whether or not the tenancy agreement is in writing.

[emphasis added]

### **Start of rights and obligations under tenancy agreement**

**16** The rights and obligations of a landlord and tenant under a tenancy agreement take effect from the date the tenancy agreement is entered into, whether or not the tenant ever occupies the rental unit.

[emphasis added]

### **Contract Law**

The following sets out the essentials of contract law that are readily available to anyone on the internet.

A contract is a legally recognized agreement between two or more persons, which gives rise to an obligation that may be enforced by the courts. A contract is a legally binding promise. If one of the parties fails or refuses to fulfil its promise without a valid reason recognized by law, the party suffering the consequence of this breach of promise may apply to the courts to force the defaulting party to carry out its promise (specific performance) or to demand compensation in the form of damages.

In common law, a contract requires offer, acceptance, and consideration. The parties must be capable of contracting and must have the intention to create legal relations.

At the root of any legally enforceable agreement is a meeting of the minds of the parties on all essential matters relating to it. The courts have generally applied the objective

test of the reasonable man to determine the intentions of the parties. Therefore, whatever a party's real intention may be, if he or she acts in such a way that a reasonable person would believe that the party was assenting to the terms proposed by the other party, and if the other party, upon that belief, enters into an agreement with him or her, an enforceable contract will come into effect.

For a contract to be binding, the parties must have the same intention, which must be disclosed by written or spoken words, or by some other signification of intention from which an implication of law, or an inference of fact, or both, may arise. Also, whether a statement is to be construed as an offer capable of acceptance to form a contract depends upon a reasonable, objective interpretation of the words used.

Section 12 sets out that the standard words of the tenancy agreement are to be included. These standard terms are set out in section 13 of the *Residential Tenancy Act* Regulation ("Regulation") and states that "standard terms" must be included in a tenancy agreement. Further, it states that the standard terms are set out in the Regulation Schedule. As a result, I find that the standard terms of the agreement between the Parties would have included those terms set out in the Schedule to the Regulation.

In the case before me, I find that the Landlord's advertisement for the rental unit at a specific price was an offer to enter into the tenancy agreement. I find that the Tenant expressed her agreement to move into the unit with her comments in the texts and emails to the Landlord, and which the Tenant confirmed with by paying the Landlord consideration of \$1,325.00 for the security deposit.

However, after a visit to the rental unit in the evening of July 20, 2021, the Tenant said she did not "feel comfortable" in the rental unit anymore, and that she had to go with her "gut" on this. I find that these are not reasonable reasons under the law to end the tenancy (a little over a week before the move-in date). I find that the Tenant breached the tenancy agreement when she cancelled it on July 21, 2021. As a result, I find that the Tenant is responsible for compensating the Landlord for any loss she incurred from the Tenant's breach.

The Landlord was able to re-rent the unit on September 1, 2021, and therefore, she lost only August rent from the Tenant's breach of the agreement. I find that the Landlord made reasonable efforts to find another tenant to move in on August 1, 2021, which was a little more than a week away, when she contacted other persons who had applied to

move in. Unfortunately, no one was still looking for a rental unit, and therefore, she had to seek someone for a September 1 start date.

I find it unreasonable to expect that the Landlord would have advertised for a tenant for August 1, given how soon that was after the breach. I find it more likely than not that, in general, people who had not yet found a unit for August 1, 2021, were the candidates that other landlords had rejected. I find the pool of suitable candidates would have been very small, if it contained anyone.

Accordingly, and pursuant to sections 62 and 67 of the Act, I award the Landlord **\$2,650.00** for the lost rent for August 2021. I authorize the Landlord to retain the Tenant's \$1,325.00 security deposit in partial satisfaction of this award. Further, given her success in this matter, I also award the Landlord with her **\$100.00** application filing fee from the Tenant, pursuant to section 72 of the Act.

Once the Landlord has deducted the \$1,325.00 security deposit from the total awarded, I find that the Tenant owes the Landlord a remaining award amount of **\$1,425.00** (including the Landlord's application filing fee). Accordingly, I grant the Landlord a Monetary Order from the Tenant of **\$1,425.00**, pursuant to section 67 of the Act.

Given the Landlord's success in this proceeding, I dismiss the Tenant's application wholly without leave to reapply, pursuant to section 62 of the Act.

### Conclusion

The Landlord is successful in her application, as she provided sufficient evidence that the Parties had entered into a verbal tenancy agreement with offer, acceptance, and consideration in place.

The Tenant breached this tenancy agreement by cancelling it before she had moved in. The Tenant's breach caused the Landlord to lose rent for August 2021, as she was unable to find a new tenant until September 1, 2021.

The Landlord is awarded **\$2,650.00** from the Tenant in recovery of rent for August 2021; the Landlord is also awarded recovery of her **\$100.00** application filing fee from the Tenant.

The Landlord is authorized to retain the Tenant's **\$1,325.00** security deposit in partial satisfaction of this award. The Landlord is granted a Monetary Order of **\$1,425.00** from

the Tenant for the balance of the awards remaining.

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.

The Tenant's application is unsuccessful, as the Landlord presented sufficient evidence to make her case on a balance of probabilities. Therefore, the Tenant's application is dismissed wholly without leave to reapply.

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: March 09, 2022

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Residential Tenancy Branch