



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNSD, MNDCT, FFT

### Introduction

The Tenant filed an Application for Dispute Resolution on November 2, 2021 seeking a return of their security deposit, other monetary compensation and reimbursement of the Application filing fee. The matter proceeded by way of a hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the “Act”) on May 31, 2022.

The Tenant attended the hearing; however, the Landlord did not attend.

### Preliminary Matter – notice of hearing to Landlord

In the hearing, the Tenant stated they provided the Notice of Dispute Resolution to the Landlord via registered mail, sent on November 5 and delivered on November 8. This package contained the evidence they prepared for this hearing. They provided an image of the registered mail label showing that address for delivery, dated November 5. The tracking information associated with the registered mail number – also provided – shows the same delivered on November 8.

From this information, I find the Tenant served the notice of this hearing, and their evidence, in line with the requirement of s. 59(3) of the *Act*. I proceeded with the hearing in the Landlord’s absence based on this confirmation.

### Issue(s) to be Decided

Is the Tenant entitled to a refund of the security deposit pursuant to s. 38 of the *Act*?

Is the Tenant entitled to a monetary order for loss or compensation pursuant to s. 67 of the *Act*?

Is the Tenant entitled to recover the filing fee for this Application pursuant to s. 72 of the *Act*?

### Background and Evidence

The Tenant in their evidence provided a copy of the tenancy agreement they signed together with the Landlord on April 30, 2020. They assisted in translating the terms of the agreement into English in the hearing. The basic term was \$1,980 per month for rent. The agreement was set for one year starting on May 1, 2020; however, in the hearing the Tenant described how they did not sign a new contract with the Landlord but had a verbal agreement for another year to continue the tenancy.

Other terms in the agreement include:

- the Landlord was responsible for water and electricity up to \$100 per month
- if a relative or friend came to visit, there was some charge of \$100 in place
- when the Tenant needs to move out, they are to give the Landlord more than 30 days of notice. If the Tenant does not do this, the deposit they paid is not to be returned.
- If the contract is not complete, the deposit will not be returned.
- The condition of the rental unit should be as it was at the start of the tenancy; if not, the Landlord will reduce any costs from the deposit.
- When the Landlord wants to end the tenancy, they must give notice to the Tenant more than 30 days in advance.

The Tenant also provided a series of text messages they had with the Landlord in late 2021. This also needed translation and the Tenant did this in the hearing. The relevant messages are as follows:

- September 30, 9:31: the Tenant advises the Landlord they will find another apartment, to move out on October 10<sup>th</sup> or 11<sup>th</sup>
- 11:16: the Landlord is ready to pay back to the Tenant the rent they already paid for October 2021
- 11:16: the Landlord has to check the rental unit to see how much they can return, according to the tenancy agreement

- October 1, 8:17: the Landlord informs the Tenant to clean the entire rental unit before they move out, and to pay the electricity fee, and to cancel the internet service

The Tenant presented that they had a telephone call with the Landlord; on that call the Landlord kept asking the Tenant to pay rent for October 2021. The Landlord asked for all of the October rent, and that is what the Tenant paid. The Tenant included an image of their transfer of the rent amount on October 1, 2021.

Next is a string of text messages from the Tenant to the Landlord starting on October 12. The Tenant gave their forwarding address on that date at 6:51. The Landlord did not return the deposit, nor the extra rent that the Tenant paid for the full month of October. On October 12 the Tenant sent a text message to the Landlord asking for the deposit, and the Landlord refused to return that extra rent amount. This is how the Tenant translated and explained the text messages from those dates that are in the evidence.

The Tenant in the hearing provided that the Landlord agreed to return the extra rent they paid for October: that was the amount leftover after the move-out date, after paying the full month of October rent to the Landlord. The Landlord returned \$1,300 to the Tenant, which was “not exactly 20 days, too little”, but intended to be the leftover amount of October rent.

The Tenant presented their claim for the following:

- the return of the security deposit, in the full amount of \$990, because the Landlord received the Tenant’s new address on October 12<sup>th</sup>. At the time of their Application, they noted “it has been more than 15 days so far”.
- One extra month, in full, of rent compensation, because the Landlord previously asked the Tenant to move out from the rental unit. In August, the Landlord had told the Tenant they wanted to sell the apartment, and at that time asked the Tenant to move out. They did not agree on a date, then the Landlord later would say they were not yet ready to sell, telling the Tenant they could stay. Based on what the Tenant read from information about tenancies, they feel this is a situation where they are entitled to one-month free rent, based on the Landlord’s messages that they would be selling the rental unit property.

## Analysis

From the evidence presented by the Tenant, I am satisfied a tenancy agreement between the parties was in place. Certain conditions set out in the agreement – as presented via translation during the hearing – conflict with the *Act*:

- The Landlord may not retain any part of the security deposit due to insufficient end-of-tenancy notice from the Tenant. If the Tenant's notice was less than 30 days, the Landlord may not keep the deposit for that reason. The *Act* s. 38 sets out the details of how a Landlord may make a claim against a security deposit when a tenancy has ended; incorrect notice from the Tenant does not mean the Landlord can automatically keep the security deposit.
- Also, in the situation where the fixed-term tenancy is not complete or the Tenant moves out before the end of the fixed-term, the Landlord may not retain any part of the security deposit.
- Also, the Landlord may not retain any part of the security deposit for poor or unclean conditions within the rental unit, without a move-out inspection meeting, a completed Condition Inspection Report, *and* a claim against the deposit filed as a dispute resolution Application at the Residential Tenancy Branch.

All of the above provisions are set out in s. 38 of the *Act*. The tenancy agreement does NOT conform with the *Act*. I find the *Act* s. 5 applies to this situation: the Landlord-Tenant here may not avoid the *Act* s. 38; also, the pieces of the contract that do conflict with s. 38 are of no effect.

The *Act* s. 38(1) states that within 15 days after the later of the date the tenancy ends, or the date a landlord receives a tenant's forwarding address in writing, that landlord must repay any security or pet damage deposit to that tenant or make an Application for Dispute Resolution for a claim against any deposit.

Further, s. 38(6) of the *Act* provides that if a landlord does not comply with subsection (1), a landlord must pay the tenant double the amount of the security and pet damage deposit.

From the evidence presented by the Tenant, I find they provided their forwarding address to the Landlord on October 12 at 6:51, as shown in their evidence of the text message on that date. The Landlord did not subsequently make a claim against the security deposit within the legislated timeframe of 15 days. When provided with the Tenant's address information, the Landlord had the opportunity to register a claim

against the deposit; however, there is no record they did so, and they did not attend the hearing to speak to this matter.

I find the Landlord did not return the deposit to the Tenant as the *Act* requires. This constitutes a breach of s. 38(1); therefore, s. 38(6) applies, and the Landlord must pay double the amount of the security deposit. This is \$1,980 to the Tenant.

The *Act* strictly governs how a landlord or a tenant may end a tenancy. In the case of a tenant notifying a landlord, this is “not earlier than one month after the date the landlord receives the notice”, as per s. 45(1) or s. 45(2).

In the case of a landlord notifying a tenant for the purchase of the property – as the Tenant stated was the case here – this is “not earlier than 2 months after the date the tenant receives the notice”, by s. 49(2)(a)(i).

The Tenant here did not definitively prove the Landlord gave notice to them for the purpose of the sale of the rental property. Such notice must be by a proper written notice, by s. 49(7), and that written form must meet certain requirements, set out in s. 52. The Tenant did not provide enough evidence to show the Landlord was selling the property and that was the reason for ending the tenancy.

I find the Landlord is not obligated to pay the Tenant one extra month of rent because of a property sale. Instead, I find the Landlord and Tenant agreed on a move-out date with a very short timeline. I dismiss this piece of the Tenant’s claim.

As the Tenant was moderately successful in this Application, I find the Tenant is entitled to recover \$50 of the Application filing fee they paid for this Application.

### Conclusion

Pursuant to s. 38(6) of the *Act*, I grant the Tenant a Monetary Order for \$2,030. I provide the Tenant this Monetary Order and they must serve it to the Landlord as soon as possible. Should the Landlord fail to comply with this Order, the Tenant may file it in the Small Claims Division of the Provincial Court where it will be 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 s. 9.1(1) of the *Act*.

Dated: June 3, 2022