



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      **MNRL-S, MNDL-S, FFL**

### Introduction

This hearing dealt with the Landlord's application pursuant to the *Residential Tenancy Act* (the "Act") for:

1. A Monetary Order to recover money for unpaid rent, holding the security deposit pursuant to Sections 38, 62, and 67 of the Act;
2. A Monetary Order for the Tenant to pay to repair the damage that they, their pets or their guests caused during their tenancy - holding security and/or pet damage deposit pursuant to Section 38 of the Act; and,
3. Recovery of the application filing fee pursuant to Section 72 of the Act.

The hearing was conducted via teleconference. The Tenant attended the hearing at the appointed date and time and provided affirmed testimony. The Landlord did not attend the hearing. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the Tenant and I were the only ones who had called into this teleconference. The Tenant was given a full opportunity to be heard, to make submissions, and to call witnesses.

I advised the Tenant that Rule 6.11 of the Residential Tenancy Branch (the "RTB") Rules of Procedure prohibits the recording of dispute resolution hearings. The Tenant testified that she was not recording this dispute resolution hearing.

The Landlord served the Tenant with the Notice of Dispute Resolution Proceeding package by Canada Post registered mail (the "NoDRP package"). The Tenant testified that she picked up the Landlord's NoDRP package for this hearing around mid

December 2021. I find that the Tenant was sufficiently served with the NoDRP package on December 15, 2021, in accordance with Section 71(2)(c) of the Act.

### Preliminary Matter

This hearing was conducted pursuant to RTB Rules of Procedure 7.3 and 7.4, in the Landlord's absence, therefore, all the Tenant's testimony is undisputed. The Rules state:

**7.3 Consequences of not attending the hearing:** If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply.

**7.4 Evidence must be presented:** Evidence must be presented by the party who submitted it, or by the party's agent.

If a party or their agent does not attend the hearing to present evidence, any written submissions supplied may or may not be considered.

This hearing was convened based on the Landlord's application. As the Landlord did not attend this hearing to present their evidence, I decline to consider the Landlord's uploaded documentary evidence for this hearing. Pursuant to Rules of Procedure 7.3, I dismiss the Landlord's application without leave to re-apply.

### Issue to be Decided

1. Is the Tenant entitled to a return of the security deposit?

### Background and Evidence

I have reviewed only the evidence and submissions relevant to the issues and findings in this matter and they are described in this decision.

The Tenant stated that this periodic tenancy began on September 1, 2020. Monthly rent was \$1,600.00 payable on the first day of each month. A security deposit of \$800.00 was collected at the start of the tenancy and is still held by the Landlord. The Tenant vacated the rental unit on November 30, 2021.

The Tenant testified that she has an autoimmune disorder. She stated she got sick because of the black mould in the rental unit, and she ended up in the hospital.

The Tenant stated she and the Landlord did not do a move-in condition inspection at the start of the tenancy. The Tenant stated she also did not do a move-out condition inspection at the end of the tenancy. The Tenant said she gave the manager's office her written notice to vacate and her forwarding address around November 16 or 17, 2021. The Tenant states she wants her security deposit returned.

### Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

The Landlord did not attend this hearing to present evidence on their claims, and I dismissed their application in entirety.

I must consider whether the Tenant is entitled to the return of her security deposit.

Under Sections 24 and 36 of the Act, landlords and tenants can extinguish their rights in relation to security and pet damage deposits if they do not comply with the Act and the *Residential Tenancy Regulation* (the "Regulations"). Further, Section 38 of the Act sets out specific requirements for dealing with security and pet damage deposits at the end of a tenancy.

The Tenant stated that neither a move-in condition inspection, nor a move-out condition inspection of the rental unit occurred prior to the Tenant moving into the rental unit or at the end of the tenancy pursuant to Sections 23 and 35 of the Act. Based on the undisputed testimony of the Tenant, I accept that the Tenant provided her forwarding address in writing to the Landlord on November 17, 2021. I accept that the tenancy ended on November 30, 2021.

Based on the undisputed testimony of the Tenant about move-in and move-out inspections, I find the Tenant did not extinguish her rights in relation to the security deposit pursuant to Sections 24 or 36 of the Act.

It is not necessary to determine whether the Landlord extinguished their rights in relation to the security deposit under Sections 24 or 36 of the Act, as extinguishment only relates to claims that are solely for damage to the rental unit and the Landlord has claimed for unpaid rent which is not damage.

I find the Landlord complied with Section 38(1) of the Act in relation to the security deposit, therefore, Section 38(6) of the Act is not engaged, and the security deposit will not be doubled.

RTB Policy Guideline #17-Security Deposit and Set off states:

**C. RETURN OR RETENTION OF SECURITY DEPOSIT THROUGH DISPUTE RESOLUTION**

*The arbitrator will order the return of a security deposit, or any balance remaining on the deposit, less any deductions permitted under the Act, on:*

- *a landlord's application to retain all or part of the security deposit*
- ...

*unless the tenant's right to the return of the deposit has been extinguished under the Act. The arbitrator will order the return of the deposit or balance of the deposit, as applicable, whether or not the tenant has applied for dispute resolution for its return.*

As no evidence was presented by the Landlord regarding their application to retain the Tenant's security deposit, the Landlord is directed to return the security deposit to the Tenant.

Conclusion

The Landlord's application for a monetary award for unpaid rent is dismissed without leave to re-apply.

The Landlord's application for compensation using the security deposit is dismissed without leave to re-apply.

The Landlord's application for a return of the filing fee is dismissed without leave to re-apply.

The Landlord is ordered to return the \$800.00 security deposit to the Tenant.

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: July 28, 2022

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Residential Tenancy Branch