



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

## **DECISION**

**Dispute Codes**      **MNDCT, MNSD, FFT**

### **Introduction**

This hearing dealt with an application by the tenant pursuant to the Residential Tenancy Act (“Act”) for orders as follows:

- For a monetary order for damage or compensation pursuant to section 67 of the Act
- For an order returning the security deposit pursuant to section 38 of the Act
- For reimbursement of the filing fee pursuant to section 72 of the Act

Landlord NW and tenant AP appeared. All parties were given a full opportunity to be heard, to present testimony, to make submissions, and to call witnesses.

The hearing was conducted by conference call. The parties were reminded to not record the hearing pursuant to Rule of Procedure 6.11. The parties were affirmed.

The parties each testified that they received the respective materials and based on their testimonies I find each party duly served in accordance with sections 88 and 89 of the Act.

### **Issue(s) to be Decided**

1. Is the tenant entitled to a monetary order for compensation?
2. Is the tenant entitled to a monetary order for the return of the security deposit?
3. Is the tenant entitled to recover the filing fee for this application?

### Background and Evidence

The tenancy commenced on August 1, 2022. Rent was \$3,300.00 per month. The landlord holds a security deposit of \$1,650.00 in trust for the tenant. The tenancy ended on October 31, 2022.

The tenant testified that he and his girlfriend signed a lease for the rental unit and then partway through the term of the lease their relationship ended. The girlfriend ended her tenancy. The tenant then asked the landlord if he could get a roommate and then requested that they enter into a mutual agreement to end the tenancy. A mutual agreement to end tenancy was provided in evidence.

The tenant testified that the landlord insisted he pay for extra internet use, which the tenant refused to pay. The tenant also alleged that the landlord requested he pay a \$500.00 move out fee, which was then reduced to a \$250.00 move out fee. The tenant refused to pay. The tenant alleged that the landlord lied and twisted the wording of the tenancy agreement which caused him distress and he is seeking compensation for his distress equal to one month's rent.

The tenant testified that he did not agree to the landlord keeping the security deposit and it was not included as part of the mutual agreement to end the tenancy. He was not told that his girlfriend had agreed to allow the landlord to keep the security deposit.

The landlord testified that she entered into a short-term lease agreement with the tenant and his girlfriend. Both parties were named as tenants on the lease. A few months into the lease the tenant's girlfriend contacted the landlord and advised her that her relationship with the tenant had ended and she wished to be removed from the lease. The landlord agreed and the tenancy with the tenant's girlfriend ended September 20, 2022. The tenant's girlfriend provided consent in writing allowing the landlord to retain the entire security deposit. The landlord provided the written consent in evidence.

The landlord stated that the tenant then contacted her and advised her that he could not afford the rent and the landlord agreed to mutually end the tenancy. She alleged that the tenant agreed verbally to allow her to retain the entire security deposit in lieu of unpaid rent. The landlord stated that although the mutual agreement to end the tenancy is dated October 3, 2020, that date is in error and the correct date that the document was signed was October 3, 2022. The agreement was that the tenancy would end

October 31, 2022. The landlord stated that her point of contact during the tenancy was the tenant's girlfriend.

### Analysis

RTB Rules of Procedure 6.6 states, "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.

Section 67 of the Act establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. As noted in Policy Guideline #16, in order to claim for damage or loss under the Act, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the Act on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. In this case, the onus is on the tenant to prove their entitlement to a claim for a monetary award.

I find that the tenant has not established that he is entitled to return of the security deposit. RTB Policy Guideline #13 states in part:

A security deposit or a pet damage deposit is paid in respect of a tenancy agreement. Regardless of who paid the deposit, any tenant who is a party to the tenancy agreement to which the deposit applies may agree in writing to allow the landlord to keep all or part of the deposit for unpaid rent or damages or may apply for dispute resolution for return of the deposit.

There was an agreement between the landlord and one of the co-tenants to allow the landlord to keep the deposit. One of the co-tenants agreed to allow the landlord to retain the security deposit and the security deposit has therefore been forfeit to the landlord by agreement. The tenant's application is dismissed.

Further I find that the tenant has not established that he is entitled to other compensation for the landlord's actions in requesting payment for extra internet use or for a move out fee. The tenant testified that he did not pay either of the requested items. The tenant provided no evidence to establish that he was entitled to

compensation due to the actions of the landlord. The tenant did not establish how any potential loss stemmed directly from a breach of the Act or the tenancy agreement.

As the tenant was not successful in his application, he is not entitled to recover the filing fee.

### Conclusion

The tenant's application is dismissed in its entirety.

This decision 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: June 6, 2023

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Residential Tenancy Branch