



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

## **DECISION**

### **Dispute Codes**

1 <sup>st</sup> Tenant Application:	MNETC, FFT
Landlord's Application:	MNRL-S, MNDL-S, FFL
2 <sup>nd</sup> Tenant Application:	MNSDS-DR, FFT

### **Introduction**

The Tenant filed an Application for Dispute Resolution on November 17, 2022 seeking “compensation because my tenancy ended as a result of a two, four, or 12 month Notice to End Tenancy, and the landlord has not complied with the Act or used the rental unit . . . for the stated purpose.” They also made a request for an order granting recovery of the fee for filing the Application in this matter. The Residential Tenancy Branch scheduled this matter for a hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the “Act”) on August 29, 2023.

The Landlord filed an Application for Dispute Resolution on December 4, 2022, seeking money for unpaid rent, and money for the Tenant’s alleged damage to the rental unit, and recovery of the Application filing fee. Concerning the same tenancy, the Residential Tenancy Branch crossed this Application to that of the Tenant already in place.

The Tenant filed a second Application on June 16, 2023, for the return of the security deposit they paid at the beginning of the tenancy, and that filing fee. This second Application was joined to the Tenant’s initial Application at the Residential Tenancy Branch for the same hearing.

The Tenant attended the scheduled hearing on August 29. The Landlord did not attend the hearing, although I left the teleconference hearing connection open until 2:06pm to enable the Landlord to call in to this teleconference hearing scheduled for 1:30pm. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed throughout the duration of the call that the Landlord was not in attendance.

Preliminary Matter – Tenant's service of the Notice of Dispute Resolution Proceeding

To proceed with this hearing, I must be satisfied that the Tenant made reasonable attempts to serve the Landlord with the Notice of Dispute Resolution for this hearing. This is aside from the fact that the Landlord's own Application was linked to this scheduled hearing, with the Notice of Dispute Resolution Proceeding to the Landlord for their own Application sent to the Landlord on December 6, 2022.

This means the Tenant must provide proof that they served the Landlord each Notice of Dispute Resolution Proceeding for their two Applications to the Residential Tenancy Branch. That service must be completed using a method allowed under s. 89 of the *Act*, and I must accept that evidence from the Tenant.

For their initial Application, the Tenant served the Notice of Dispute Resolution Proceeding to the Landlord via registered mail, as stated in the hearing. This was to the address the Landlord used on a prior notice to end tenancy they served to the Tenant. The Tenant provided a copy of a receipt from the post office dated November 15, 2022, bearing a registered mail tracking number. The Tenant in the hearing confirmed they provided evidence to the Landlord in this initial package. The tracking number reveals this item was delivered to the Landlord on November 22, 2022.

For the Tenant's second Application, the Tenant used the same method. The Residential Tenancy Branch provided this second Notice of Dispute Resolution Proceeding provided to the Tenant on June 20, 2023. The Tenant provided evidence they forwarded this to the Landlord in the form of a registered mail receipt dated June 22 and tracking number. For this service, the Tenant used the address the Landlord provided on the Landlord's Application that was forwarded to the Tenant in the interim. This item was returned to the Tenant as undelivered.

The Tenant forwarded final pieces of their evidence to the Landlord on July 31, via registered mail. This registered mail tracking number shows the item returned to the sender on August 22, 2023.

I accept the Tenant served notice of this hearing to the Landlord in a manner complying with s. 89(1)(c) of the *Act*. The hearing proceeded in the Landlord's absence.

Preliminary Matter -- The Landlord's Application and attendance

The Landlord did not attend the hearing, although I left the teleconference hearing connection open until 1:56pm to enable the Landlord to call in to this teleconference hearing scheduled for 1:30pm. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed throughout the duration of the call that the Landlord was not in attendance.

Rule 7.3 of the *Residential Tenancy Branch Rules of Procedure* provides that if a party or their agent fails to attend the hearing, the arbitrator may conduct the hearing in the absence of that party or dismiss that party's application without leave to reapply.

As the Landlord did not attend to present their Application, I dismiss the Landlord's Application in its entirety, without leave to reapply.

#### Preliminary Matter – listed issue for dispute resolution

On the initial Application the Tenant indicated their monetary claim was for 12 months' equivalent of rent compensation due to a two-month notice to end tenancy. In the hearing the Tenant presented other expenses to them. For ease of organization in this decision, I am setting out this portion of the Tenant's Application as a separate issue listed below.

#### Issues to be Decided

Is the Tenant entitled to compensation associated with the Landlord's service of a two- or four-month notice to end tenancy, as per s. 51 of the *Act*?

Is the Tenant entitled to compensation for other money owed, pursuant to s. 67 of the *Act*?

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

Is the Tenant entitled to recovery of either/both of the Application filing fee/s, pursuant to s. 72 of the *Act*?

#### Background and Evidence

The Tenant set out that there was no documented tenancy agreement between them and the Landlord. They requested this from the Landlord in March 2021. On the Tenant's Application, they set out that they paid \$700 each month for rent for the tenancy starting on March 1, 2021.

The Tenant provided a record that they paid a security deposit of \$350 to the Landlord in the form of a confirmation of an electronic transfer, undated. This is from the Tenant's email address to the Landlord's email address for the amount of \$350, noting "down payment for room rent." On a separate worksheet, the Tenant provided that they paid this amount to the Landlord on February 18, 2021.

The Tenant described living in the upstairs part of the rental unit property, in a single room with other residents. They contacted the named Landlord initially, and this Landlord made the offer of the room to the Tenant. After this, the Tenant paid \$350 and moved into the rental unit. The Tenant maintains that this was a sublet situation, upon communicating with other residents in that rental unit property. Other residents were in contact with the actual owner of the rental unit property. The Tenant tried to contact the actual owner after this tenancy ended; however, they only had an email address for that purpose and received no response.

This tenancy ended when the Landlord served a One-Month Notice to End Tenancy for Cause (the "One-Month Notice") on August 28, 2022, as provided in the Tenant's evidence. This described the owner's request to the Landlord to "reduce number [of residents] in the house." This set the end-of-tenancy date for September 30, 2022. The Tenant described challenging this One-Month Notice in a formal dispute resolution process; however, by the time of the hearing they had already moved out and the arbitrator dismissed the Tenant's Application.

i. 12 months of compensation

On their Application, the Tenant set out the amount of \$8,600 in total. Part of this is the equivalent of 12 months' rent they paid to the Landlord, ostensibly for the Landlord ending the tenancy with a Two-Month Notice to End Tenancy for Landlord's Use of the rental unit (the "two-month notice"). The Tenant did not present a copy of a two-month notice in their evidence.

The Tenant more accurately in the hearing gave the amount of \$8,400 as the equivalent of 12 months' rent amount.

The Tenant presented that the part of the *Act* granting this amount as an award – as set out in s. 51 of the *Act* – applies to this situation, because this was an "unlawful eviction." The Tenant

stated that the burden of proof is on the Landlord in this situation to show that the end-of-tenancy was legitimate and legal.

The Tenant in the hearing stated there should be another section in the *Act* to govern this type of situation. As entered on their Application, “the subletter has failed to accomplish the stated purpose for ending the tenancy” and did not ultimately reduce the number of residents living upstairs. The Tenant presented evidence that, as soon as they moved out, the Landlord re-rented out that room [*i.e.*, the rental unit] to another tenant.

ii. other compensation amounts

In the hearing the Tenant provided the separate amounts they paid for registered mail to the Landlord after the end of the tenancy (\$62.94 total). They also included the cost of a USB to send evidence to the Landlord in electronic format (\$23.50).

The Tenant in the hearing provided the amount of \$88.88 as extra money they had to pay on their own mobile phone plan because of the Landlord cutting off the internet at the rental unit prior to the tenancy ending.

iii. Tenant’s return of the security deposit

In their evidence, the Tenant provided the following:

- a Residential Tenancy Branch-provided form, the “Tenant’s Notice of Forwarding Address for the Return of Security and/or Pet Damage Deposit” (Residential Tenancy Branch-47), signed by the Tenant on November 14, 2022. This set out the Landlord’s address as well as an email address, and provided an actual forwarding address for the Tenant.
- The Tenant provided a Proof of Service document for this particular form, setting out that they used registered mail for this purpose, on November 15, 2022
- A registered mail receipt dated November 15, 2022, and a tracking number assigned to the Tenant for this purpose. The tracking number reveals the mail was delivered on November 22, 2022.

## Analysis

i. 12 months of compensation

The *Act* provides for 12 months' rent amount compensation to a former tenant where a landlord does not establish that the stated purpose for ending a tenancy was accomplished within a reasonable period, and that rental unit was used for the stated purpose for at least 6 months' duration.

This s. 51(1) species this is "a notice to end tenancy under section 49 [*landlord's use of property*]" . The *Act* s. 49 provides that a landlord may end a tenancy for their own use of the rental unit by using a two-month notice to end tenancy (as per s. 49(2)(a)) or a four-month notice to end tenancy (as per s. 49(2)(b)).

I find the *Act* allows for 12 months of rent compensation only in the situation where a landlord issues a Two- or Four-Month Notice to End Tenancy. That did not happen in this tenancy, where the Landlord served the Tenant the One-Month Notice on August 28, 2022. There is no other provision of this amount for any other type of end-of-tenancy notice. I find the Tenant did acknowledge this in the hearing.

I dismiss this piece of the Tenant's Application because the Landlord did not end the tenancy with either a Two- or Four- Month Notice to End Tenancy. The Tenant presented that the Landlord did not do what they stated they would do on the end-of-tenancy Notice; however, that was not the type of notice for which the *Act* prescribes 12 months' rent equivalent as compensation to a tenant.

I find the Tenant is applying for this compensation in order to have a financial penalty in place for what they feel was the Landlord's dishonesty in ending this tenancy. The *Act* does not allow for this in the case of a One-Month Notice to End Tenancy.

ii. other compensation amounts

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in sections 7 and 67 of the *Act*.

To be successful in a claim for compensation for damage or loss the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss; **and**

4. Steps taken, if any, to mitigate the damage or loss.

The Tenant applied for compensation associated with the registered mail they to send to the Landlord, the format by which they chose to send their evidence, and extra expenses they incurred because of the Landlord ending internet service.

No expense the Tenant submits on here regarding applying for a hearing arises from a proven, established violation of the *Act* or the tenancy agreement by the Landlord. These are incidental expenses related to the hearing procedure. It was the Tenant's choice to utilize registered mail over any other means of service that may have proven more effective. The *Act* only allows for repayment of a fee for starting proceedings, not the costs that a party to the proceedings may incur through service of evidence or other documents.

Regarding the Tenant losing internet service at some point, I dismiss this piece because of the lack of full particulars in the Tenant's Application. There is no information to show that the Landlord was meant to provide internet service as per the tenancy agreement. Additionally, I could not understand the documents that the Tenant provided in evidence, and the Tenant did not clearly set out the amount of \$88.88 therein.

I dismiss the Tenant's claim additional compensation for money owed to them.

iv. Tenant's return of the security deposit

The *Act* s. 38(1) provides that a landlord must either: repay a security and/or pet deposit; or apply for dispute resolution to make a claim against those deposits. This must occur within 15 days after the later of the end of tenancy or a tenant giving their forwarding address.

Then, s. 38(6) sets out the consequences where the landlord does not comply with the requirements of s. 38(1). These are: the landlord may not make a claim against either deposit; and, the landlord must pay double the amount of any deposit.

I find as fact, based on their undisputed evidence and testimony, the Tenant gave their forwarding address to the Landlord as provided for in their evidence: they gave this to the Landlord via registered mail on the Residential Tenancy Branch form, on November 15, 2022. This arrived to the Landlord on November 22.

I find the Landlord applied for dispute resolution on December 4, 2022. This is within 15 days after they received the Tenant's forwarding address. The Landlord did not breach s. 38 of the *Act*; therefore, there is no doubling of the deposit amount.

The Landlord was not successful on their claim; therefore, they must repay the security deposit in its entirety to the Tenant. There is no provision for double of that amount in this situation. To ensure the Landlord's compliance, I grant the Tenant a monetary order for the full amount of the deposit: this is \$350.

The *Act* s. 72 grants me the authority to order the repayment of a fee for the Application. As the Tenant was successful in their claim, I find they are entitled to recover the filing fee from the Landlord.

### Conclusion

I dismiss the Tenant's Application for compensation for 12 months' rent amounts, and other money owed to them. There is no reimbursement of the Application filing fee to the Tenant because they were not successful on this Application.

I order the Landlord to pay the Tenant the amount of \$450. I grant the Tenant a Monetary Order for this amount. The Tenant must serve this Monetary Order on the Landlord. Should the Landlord fail to comply with this Monetary Order, the Tenant may file it in the Provincial Court (Small Claims) 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: August 30, 2023

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Residential Tenancy Branch