



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes MNRL-S, FFL

### Introduction

This teleconference hearing was scheduled in response to an application by the Landlord under the *Residential Tenancy Act* for a Monetary Order for unpaid rent, to retain the security deposit towards the rent owed and for the recovery of the filing fee paid for this application.

The Landlord and an agent for the Landlord (the “Landlord”) were present for the teleconference hearing, while no one called in for the Tenant during the approximately 24 minute hearing. As the Tenant was not present, service of the Notice of Dispute Resolution Proceeding (the “Notice of Hearing”) was addressed.

The Landlord provided affirmed testimony that the Notice of Hearing documents along with the Landlord’s evidence package was sent to the Tenant by registered mail on May 1, 2018. The tracking number was submitted in evidence and is included on the first page of this decision. The Landlord testified that the registered mail was returned to them after not being picked up and the tracking number on the Canada Post website confirms that the registered mail was returned to the sender.

The Landlord testified that the address the registered mail was sent to is the address provided by the Tenant as their forwarding address. The Landlord stated they received the Tenant’s forwarding address on April 17, 2018 through text message.

The Landlord also submitted in evidence a text message she sent to the Tenant advising him of her application for dispute resolution and asking him to pick up the registered mail package or it would be returned to her. I note that refusing or neglecting registered mail is not a ground for review under the *Act*.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this decision.

### Preliminary Matter

During the hearing, it was noted that the Tenant's name was spelled differently on some of the documents than it was on the Application for Dispute Resolution. The Landlord provided what they believed to be the correct spelling of the name which was different than how the name was spelled on the application. In accordance with Section 64 of the *Residential Tenancy Act* (the *Act*), the application has been amended to change the spelling of the Tenant's first name.

### Issue(s) to be Decided

Is the Landlord entitled to a Monetary Order for unpaid rent?

Is the Landlord entitled to retain the security deposit in partial satisfaction of the money owed?

### Background and Evidence

The Landlord testified that the tenancy began in the summer of 2014. They hired a property management company who found the tenant for them and arranged the details of setting up the tenancy. The Tenant moved out on April 1, 2018 at which time the rent was \$1,000.00 per month due on the first day of the month. A security deposit in the amount of \$450.00 was paid at the outset of the tenancy. No pet damage deposit was paid. A move-in condition inspection report was completed and signed by the property management company and the Tenant.

The Landlord testified that while on a trip in March 2018, she received a text from the Tenant regarding the Landlord's children playing loud music upstairs. The Tenant had also contacted the Landlord's children directly and the children turned the music down.

The Landlord testified that five days after this exchange, on March 29, 2018, she received a text message from the Tenant stating that he would be moving out on April 1, 2018. The Landlord stated that they told the Tenant that he would still be responsible for rent for April 2018.

After the Tenant moved out on April 1, 2018, the Landlord received a call from the Tenant's girlfriend asking about scheduling a move-out condition inspection report. The Landlord had looked through the rental unit and let the Tenant and his girlfriend know that there was no need for a condition inspection report as there was no damage and the Tenant was entitled to his full security deposit back.

The Tenant sent his forwarding address to the Landlord by text message on April 17, 2018. The Landlord accepted the address in this manner as they had previously communicated through text message.

The Landlord is still in possession of the \$450.00 from the Tenant's security deposit and has applied to withhold this against the \$1,000.00 they claim is owing for rent for April 2018.

The Landlord submitted in evidence a statement of rent payments received from the Tenant showing an amount of \$1,000.00 deposited for November 1, 2017, December 1, 2017, January 1, 2018, February 1, 2018 and March 2, 2018.

### Analysis

The Landlord provided undisputed and affirmed testimony regarding the details of the tenancy. As the Tenant was served with the Notice of Hearing documents in accordance with the *Act*, but did not attend the hearing, I accept the Landlord's undisputed testimony and evidence.

Pursuant to Section 38(1) of the *Act*, a landlord has 15 days from the later of the date the tenancy ends or the date the tenant's forwarding address is provided to repay the security deposit or to file a claim against it. Based on the testimony of the Landlord, I find that the Tenant's forwarding address was provided on April 17, 2018 and the Landlord applied for Dispute Resolution on April 27, 2018, within the 15 day timeframe allowable under the *Act*.

Under Section 45 of the *Act*, a tenant may end the tenancy by giving notice to the landlord not less than one full rental month after the notice is given. As the Landlord testified that the Tenant gave notice on March 29, 2018 to move out on April 1, 2018, I do not find that the notice complied with Section 45. A tenant's notice to end the tenancy provided to the Landlord on March 29, 2018 would lead to an effective end of tenancy date of April 30, 2018.

In accordance with Section 53 of the *Act*, an incorrect end of tenancy date on a notice to end tenancy automatically corrects to the correct effective end of tenancy date. In this case, I find that the Tenant's notice on March 29, 2018, as testified to by the Landlord, automatically corrects to end the tenancy on April 30, 2018.

As rent is due on the first day of the month, I find that the Tenant was responsible to pay rent for April 2018 pursuant to Section 26 of the *Act*.

As the Landlord is still in possession of the Tenant's security deposit in the amount of \$450.00, they are ordered to retain this amount in partial satisfaction of the \$1,000.00 owed for rent for April 2018.

As the Landlord was successful in their claim, I also find that they are entitled to the recovery of the filing fee paid for this application in the amount of \$100.00.

A Monetary Order will be granted in the amount outlined below:

### *Monetary Order Calculations*

April 2018 rent	\$1,000.00
Recovery of filing fee	\$100.00

Less security deposit	(\$450.00)
<b>Total owing to Landlord</b>	<b>\$650.00</b>

### Conclusion

The Landlord is ordered to retain the security deposit in the amount of \$450.00 in partial satisfaction of the total amount owed.

Pursuant to Section 67 of the *Act*, I grant the landlord a **Monetary Order** in the amount of \$650.00 for rent owed for the month of April 2018. The Landlord is provided with this Order in the above terms and the Tenant must be served with **this Order** as soon as possible. Should the Tenant fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and 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 Section 9.1(1) of the *Residential Tenancy Act*.

Dated: June 05, 2018

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Residential Tenancy Branch