



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MND-S, MNDC-S, FF, MNSD

### Introduction

This hearing dealt with applications from both the landlord and the tenants under the *Residential Tenancy Act* (the *Act*). The landlord applied for:

- a monetary order for damage to the rental unit, and for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38;
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The tenant applied for:

- authorization to obtain a return of all or a portion of her security deposit pursuant to section 38;
- authorization to recover her filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing via conference call and provided testimony. Both parties confirmed the landlord served the tenant with the notice of hearing package via Canada Post Registered Mail on July 26, 2019. Both parties also confirmed the tenant served the landlord with the notice of hearing package via Canada Post Registered Mail on July 29, 2019. The landlord stated that the tenant was served with all of the submitted documentary evidence via regular mail post on September 9, 2019. The tenant argued that no documentary evidence has been received from the landlord. The tenant stated that she did not attempt to serve the landlord with any of her documentary evidence.

I accept the testimony of both parties and find that both parties have been sufficiently served as per sections 88 and 89 of the Act with the notice of hearing package(s). I also find based upon the testimony of both parties that the documentary evidence of both parties shall be excluded from consideration in this decision. The landlord's documentary evidence was argued by the tenant to not have been served and the landlord was unable to provide sufficient evidence to support his claim of service. The tenant's documentary evidence was not even attempted to be served by the tenant onto the landlord.

Extensive discussions took place in clarifying the landlord's monetary claim. The landlord provided in his direct testimony detailed information on the \$2,300.00 claim, yet provided monetary details which exceeded this amount. The tenant stated that none of these details were provided to her in the landlord's application package. The landlord could not provide sufficient details of where this information was located in the application package. In the circumstances, I find that the landlord failed to provide sufficient details to the Residential Tenancy Branch and to the tenant to allow the tenant a reasonable opportunity to respond to this claim. As such, the landlord's entire monetary claim is dismissed with leave to reapply. The hearing shall proceed on the tenant's application only. Leave to reapply is not an extension of any applicable limitation period.

#### Issue(s) to be Decided

Is the tenant entitled to return of all or part of the security deposit and recovery of the filing fee?

#### Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the both the tenant's claim and the landlord's cross claim and my findings around each are set out below.

Both parties confirmed this tenancy began on July 1, 2018 on a month-to-month basis until June 30, 2019. The monthly rent was \$2,000.00 payable on the 1<sup>st</sup> day of each month. A security deposit of \$1,000.00 and a pet damage deposit of \$500.00 were paid.

The tenant seeks a monetary claim of \$1,600.00 for return of the \$1,000.00 security, the \$500.00 pet damage deposit and the \$100.00 filing fee.

Both parties confirmed the landlord has withheld and has not returned the security and pet damage deposits, save and except a cheque for \$400.00 that the tenant received from the landlord.

In this case, the tenant provided undisputed testimony that she gave notice via text message to end the tenancy on May 15, 2019 for July 1, 2019. Both parties confirmed that the tenancy ended on June 30, 2019 when the tenant vacated the rental unit.

### Analysis

Section 38 of the Act requires the landlord to either return all of a tenant's security deposit or file for dispute resolution for authorization to retain a security deposit within 15 days of the end of a tenancy or a tenant's provision of a forwarding address in writing.

I accept the undisputed testimony of both parties that the tenant paid to the landlord a security deposit of \$1,000.00 and a pet damage deposit of \$500.00 which the landlord currently holds. Both parties confirmed that the tenancy ended on June 30, 2019. The tenant provided undisputed testimony that she gave notice to end the tenancy on May 15, 2019 via text. Both parties also confirmed that the tenant holds a \$400.00 cheque issued to the tenant from the landlord for return of part of the deposits.

In this case, I accept the tenant's claim that her forwarding address was provided to the landlord via text on May 15, 2019. On this basis, I find that the tenant is entitled to return of the entire \$1,000.00 security and the \$500.00 pet damage deposits. I authorize the tenant to deduct from the \$1,500.00 owed by the landlord, \$400.00 for the cheque currently held by the tenant.

The tenant is also entitled to recovery of the \$100.00 filing fee.

### Conclusion

The tenant is granted a monetary order for \$1,600.00 for return of the security, pet damage deposits and the filing fee, with the exception noted above for the \$400.00 cheque already issued by the landlord and is held by the tenant currently.

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: November 04, 2019

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Residential Tenancy Branch