



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing and Social Development

## **DECISION**

### Dispute Codes:

MNSD, MNR, FF

### Introduction

This was a cross-Application hearing.

This hearing was scheduled in response to the tenant's Application for Dispute Resolution, in which the tenant has made application for a monetary Order for return of the security deposit and to recover the filing fee from the landlord for the cost of this Application for Dispute Resolution.

This hearing was also scheduled in response to the landlord's Application for Dispute Resolution, in which the landlord has made application for a monetary order for unpaid rent and to recover the filing fee costs from the tenant.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral testimony and to make submissions during the hearing. No evidence was submitted by the landlord.

### Issue(s) to be Decided

Is the tenant entitled to return of the deposit paid?

Is the landlord entitled to a monetary Order for loss of October 2009 rent?

Is either party entitled to filing fee costs?

### Background and Evidence

The tenancy commenced in April 2007 and terminated on September 30, 2009. The tenant paid a security deposit of \$375.00 on April 1, 2007. This was a month-to-month tenancy and rent was due by the first day of each month.

On September 30, 2009 the tenant provided the landlord with a written forwarding address and received a cheque dated October 13, 2009 in the sum of \$348.26. The tenant testified that when the move-out condition inspection was completed on September 30, 2009 she did not provide the landlord with written permission to make deductions from the deposit paid.

Prior to the end of August 2009 the tenant provided written notice that she would move out "as of" October 1, 2009. The landlord responded in writing on August 31, 2009, acknowledging the tenant's plan to move and vacate the rental unit as of October 1, 2009. The landlord stated that if the tenant was not going to move until October 1, she would owe October rent. The landlord had a tenant available for October 15, 2009 and this tenant was to pay for the complete month of October.

The move-out condition inspection was completed at 9 p.m. on September 30, 2009. The tenant claims her belongings were removed by 7 p.m. The landlord is claiming loss of October rent as the tenant failed to vacate the rental unit by 1 p.m., as required by the written tenancy agreement. The landlord explained that construction workers were ready to commence work on the rental unit and that the loss of the approximately 8 hours of time on the afternoon and evening of September 30, 2009, resulted in such a serious impact on the planned renovations, that a domino effect caused the loss of the tenant.

The landlord deducted 1/30<sup>th</sup> of one month's rent from the deposit and returned the balance to the tenant.

### Analysis

Section 38(1) of the Act determines that the landlord must, within 15 days after the later of the date the tenancy ends and the date the landlord received the tenant's forwarding address in writing, repay the deposit or make an application for dispute resolution claiming against the deposit. If the landlord does not make a claim against the deposit paid, section 38(6) of the Act determines that a landlord **must** pay the tenant double the amount of security deposit.

The landlord returned only a portion of the deposit, did not have written permission to retain any portion of the deposit and did not make an Application against the deposit within fifteen days. Therefore, I find, as required by section 38(6) of the Act, that the landlord must return double the deposit paid to the tenant.

When making a claim for damages under a tenancy agreement or the Act, the party making the allegations has the burden of proving their claim. Proving a claim in damages requires that it be established that the damage or loss occurred, that the damage or loss was a result of a breach of the tenancy agreement or Act, verification of

the actual loss or damage claimed and proof that the party took all reasonable measures to mitigate their loss.

In relation to the landlord's claim for loss of October rent due to the failure of the tenant to move out by 1 p.m. on September 30, 2009, I find that the delay in move-out to approximately 7 p.m., combined with the absence of any verification of the loss claimed, that the landlord is not entitled to unpaid October 2009, rent. I also base this decision on the landlord's testimony that the new tenant was not planning on moving in until October 15. There is no evidence before me that the loss of several hours of time had such a severe impact as to have caused any renovation work to be delayed to the point of losing a tenant who was not moving in until two weeks later. I reject the suggestion that the tenant's notice to end the tenancy indicated she would remain in the unit beyond September 30, and find that the use of the phrase "as of" means that, effective October 1, the tenant would no longer occupy the rental unit.

I find that the tenant's application has merit, and I find that the tenant is entitled to recover the filing fee from the landlord for the cost of this Application for Dispute Resolution.

As the landlord's Application does not have merit, I deny the landlord filing fee costs.

### Conclusion

I find that the tenant has established a monetary claim, in the amount of \$809.93, which is comprised of double the deposit in the sum of \$750.00, \$9.93 interest and \$50.00 in compensation for the filing fee paid by the tenant for this Application for Dispute Resolution.

Based on these determinations I grant the tenant a monetary Order for \$809.93. In the event that the landlord does not comply with this Order, it may be served on the landlord, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court. If the tenant has cashed the cheque issued by the landlord in the sum of \$348.26, the amount Ordered paid will be adjusted by that amount. If the tenant enforces this Order through Small Claims Court, the tenant is obliged to provide records of any payments made by the landlord.

The landlord's claim for unpaid October rent is dismissed without leave to reapply.

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: February 22, 2010.

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Dispute Resolution Officer