



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      SS, MNR, MNSD, MNDC, FF  
                                 MNDC, MNSD, FF

### Introduction

This hearing dealt with cross application by the landlord and tenant. The application by the landlord for substituted service, a monetary order for unpaid rent, to keep all or part of the security deposit, money owed or compensation for damage or loss and recovery of the filing fee. The application by the tenant is for return of the security deposit, money owed or compensation for damage or loss and recovery of the filing fee. Both parties participated in the conference call hearing.

### Issue(s) to be Decided

Is either party entitled to any of the above under the Act.

### Background and Evidence

This tenancy began April 1, 2011 with monthly rent of \$400.00 and the tenant paid a security deposit of \$200.00. On April 14, 2011 the tenant gave the landlord notice that she would be vacating the rental unit April 15, 2011.

The landlord stated that she was not in receipt of the tenant's evidence package however the tenant provided evidence that it had been sent September 7, 2011 by registered mail and signed for at the landlord's address. The landlord responded that she may not have received the evidence package as she shares a mail box with her tenants.

The landlord testified that she and the tenant had agreed that they would be going to arbitration to settle their dispute and that the landlord had not been ready to file for dispute resolution until June 29, 2011. The landlord stated that she had been able to secure a new tenant for May 15, 2011 which resulted in a loss of rent of \$200.00 for May. The landlord confirmed that she had incurred a cost of \$200.00 for service of documents upon the tenant.

The landlord in this application is seeking \$600.00 compensation for the following:

May rent	\$400.00
Personal service of documents	\$200.00
<b>Total Claim</b>	<b>\$600.00</b>

The tenant testified that she understood she had not given the landlord proper notice when she gave her notice on April 15, 2011 and vacated that same day. The tenant stated that she submitted her \$564.65 claim for reimbursement of gas as after the tenancy ended she had to relocate back to Victoria and commute to Nanaimo for her job. The tenant stated that is there had not been issues with the tenancy she would not have had to move and incur this cost.

The tenant stated that she was claiming \$121.06 in lost wages as she had to leave work and drive to the Residential Tenancy Branch office in Victoria to obtain information regarding her rights and obligations.

The tenant in this application is seeking \$1285.72 compensation for the following:

Security deposit	\$400.00
Gas	\$564.65
Loss of pay	\$121.06
½ of April rent	\$200.00
<b>Total Claim</b>	<b>\$1285.72</b>

### Analysis

Based on the documentary evidence and testimony I find on a balance of probabilities that the landlord has met the burden of proving that they have grounds for entitlement to a monetary order for unpaid rent. The tenant did not give proper notice to the landlord and as a result the landlord suffered a loss of rental income. The landlord did mitigate their loss however and secured a new tenant for May 15, 2011.

Section 45 of the *Residential Tenancy Act* provides a tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that *(a) is not earlier than one month after the date the landlord receives the notice.*

Accordingly I find that the landlord is entitled to compensation for the lost May 2011 rental revenue of \$200.00.

Section 72 of the Act addresses Director's orders: fees and monetary orders. With the exception of the filing fee for an application for dispute resolution, the Act does not provide for the award of costs associated with litigation to either party to a dispute.

Accordingly, the landlord's claim for \$200.00 in costs for service of documents on the tenant is hereby dismissed.

Based on the documentary evidence and testimony of the parties, I find on a balance of probabilities that the tenant has met the burden of proving that they have grounds for entitlement to a monetary order for return of double the security deposit. Although the parties agreed to settle their dispute through arbitration, the timelines as outlined in the *Act* prevail and must be adhered to and it is the responsibility of the parties to ensure this is done.

Section 38(1) of the *Residential Tenancy Act* provides that the landlord must return the security deposit or apply for dispute resolution within 15 days after the later of the end of the tenancy and the date the landlord received the tenant's forwarding address in writing.

Section 38(6) of the *Residential Tenancy Act* provides in part that if a landlord does not comply with his statutory obligation to return the security deposit within 15 days, the landlord must pay the tenant double the amount of the deposit.

Accordingly I find that the tenant is entitled to a monetary order for \$400.00 in return of the security deposit.

The tenant entered into a tenancy with the landlord and was under obligation to pay the monthly rent as agreed to in the tenancy agreement. And although the tenant wished to end the tenancy early and did so, the tenant is responsible for payment of the April 2011 rent. The tenant's application for reimbursement of \$200.00 of the April 2011 rent is hereby dismissed.

A claim in Tort is a personal wrong caused either intentionally or unintentionally and in all cases, the applicant must show that the respondent breached the care owed to him or her and that the loss claim was a foreseeable result of the wrong. I do not find on a balance of probabilities that the tenants claim for compensation for gas and lost pay rise to that requirement. The tenant had the opportunity to come to this office prior to ending the tenancy and file for dispute resolution to address any issues that had arisen with the tenancy however that was not done. The tenant's claim for reimbursement of gas for her vehicle after the tenancy ended and 5 hours of pay for lost work are hereby dismissed.

The landlord is entitled to compensation in the amount of \$200.00 for loss of rental income. The tenant is entitled to compensation in the amount of \$400.00 in return of double the security deposit. These two amounts off-set one another resulting in a balance of \$200.00 to the tenant for which the tenant will be provided a monetary order.

As both applications had merit, I decline to make an order regarding the filing fees and each party will assume responsibility for the costs associated with their application.

Conclusion

The landlord is entitled to compensation in the amount of \$200.00 for loss of rental income. The remainder of the landlord's application is dismissed without leave to reapply.

The tenant is entitled to compensation in the amount of \$400.00 in return of double the security deposit. The remainder of the tenant's application is dismissed without leave to reapply.

I find that the tenant has established a monetary claim for **\$200.00** in return of the security deposit and I grant the tenant a monetary order under section 67 of the *Act* for this amount.

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: September 20, 2011.

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Residential Tenancy Branch