



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Dispute Codes:**

Tenant's application: MNDC; MNSD; FF

Landlord's application: MND; MNSD; MNDC; FF

### **Introduction**

This Hearing was convened to consider cross applications. The Tenant seeks compensation for damage or loss under the Residential Tenancy Act (the "Act"); return of the security deposit; and to recover the cost of the filing fee from the Landlord.

The Landlord seeks a Monetary Order for damages; compensation for damage or loss under the Act; to apply the security deposit against his monetary award; and to recover the cost of the filing fee from the Tenant.

The parties gave affirmed testimony at the Hearing.

### **Issues to be Decided**

1. Is the Tenant entitled to compensation in the equivalent of double the amount of the security deposit in accordance with the provisions of Section 38(6) of the Act?
2. Is the Landlord entitled to a monetary award for loss of income for the month of December, 2011, and the cost of cleaning the rental unit pursuant to the provisions of Section 67 of the Act?
3. May the Landlord set off the security deposit against his monetary award?

### **Background and Evidence**

The Landlord provided a copy of the tenancy agreement was provided in evidence. This tenancy began on July 1, 2011, for a fixed term of 6 months, ending on December 31, 2011. Monthly rent was \$975.00, due on the first day of each month. The Tenant paid a security deposit in the amount of \$492.50 on July 1, 2011.

The Tenant testified that, in October, 2011, she gave the Landlord notice, via e-mail, that she would be ending the tenancy at the end of November, 2011. She testified that she e-mailed the Landlord her forwarding address on December 2, 2011, and then sent

it again by registered mail on or about January 16, 2012. The Tenant did not provide copies of the e-mails or proof of service of the registered mail.

The Tenant testified that she moved out of the rental unit on November 25, 2011. She stated that when the parties met to do the move out inspection the Landlord told her that he was unable to re-rent the suite for December 1, 2011, so he was keeping the security deposit. The Tenant testified that she did not give the Landlord permission to keep any of the security deposit.

The Landlord testified that he received the Tenant's forwarding address in writing by registered mail on February 9, 2012. He submitted that the Tenant did not give adequate notice to end the tenancy and that she left before the term of the lease had expired. The Landlord testified that the Tenant did not leave the suite in a reasonably clean condition at the end of the tenancy and seeks compensation for cleaning the suite.

### **Analysis**

A security deposit is held in a form of trust by the Landlord for the Tenant, to be applied in accordance with the provisions of the Act.

Section 38(1) of the Act provides that (unless a landlord has the tenant's consent to retain a portion of the security deposit) at the end of the tenancy and after receipt of a tenant's forwarding address in writing, a landlord has 15 days to either:

1. repay the security deposit in full, together with any accrued interest; or
2. make an application for dispute resolution claiming against the security deposit.

The Tenant submitted that she gave the Landlord her forwarding address on December 2, 2012, by e-mail. There is no provision in the Act for service of documents by e-mail. The Tenant stated that she also sent her forwarding address to the Landlord by registered mail in mid-January, although she was uncertain of the date and did not provide the tracking information. The Landlord testified that he received the Tenant's forwarding address in writing on February 9, 2012, and therefore in the absence of any documentary evidence to the contrary, I find that the Landlord received her forwarding address on February 9, 2012.

Section 38(6) of the Act provides that if a landlord does not comply with Section 38(1) of the Act, the landlord must pay the tenant double the amount of the security deposit. In this case, the Landlord filed his Application for Dispute Resolution on February 23, 2012, which is within the 15 day time period allowed under Section 38(1) of the Act. Therefore, I find that the Tenant has failed to establish that she is entitled to

compensation in the amount of double the security deposit pursuant to the provisions of Section 38(6) of the Act and her application is dismissed.

The Tenant signed a 6 month term tenancy agreement which is a legal contract. Section 45 of the Act states:

### **Tenant's notice**

**45** (1) 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, and

(b) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

**(2) A tenant may end a fixed term 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,

**(b) is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and**

(c) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

(3) If a landlord has failed to comply with a material term of the tenancy agreement or, in relation to an assisted or supported living tenancy, of the service agreement, and has not corrected the situation within a reasonable period after the tenant gives written notice of the failure, the tenant may end the tenancy effective on a date that is after the date the landlord receives the notice.

(4) A notice to end a tenancy given under this section must comply with section 52 *[form and content of notice to end tenancy]*.

(emphasis added)

In this case the earliest date that the Tenant could have ended the tenancy was December 31, 2012. It is also important to note that the Tenant did not provide notice to end the tenancy in accordance with the provisions of Section 52 (she did not provide her notice in writing).

Section 67 of the Act states:

**Director's orders: compensation for damage or loss**

**67** Without limiting the general authority in section 62 (3) [*director's authority respecting dispute resolution proceedings*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

I find that the Tenant did not comply with Section 45 of the Act and that the Landlord suffered loss of income for the month of December, 2011, as a result. Therefore, I allow the Landlord's claim for loss of income in the amount of **\$975.00**.

The Landlord did not provide sufficient evidence to prove his claim for the cost of cleaning the rental unit and this portion of his claim is dismissed.

The Landlord may apply the security deposit in partial satisfaction of his monetary award, pursuant to the provisions of Section 72 of the Act.

The Landlord's application had merit and I find that he is entitled to recover the cost of the **\$50.00** filing fee from the Tenant.

I hereby provide the Landlord a Monetary Order, calculated as follows:

Loss of income for December, 2011	\$975.00
Recovery of the filing fee	<u>\$50.00</u>
Subtotal	\$1,025.00
Less security deposit	<u>-\$492.50</u>
<b>BALANCE DUE TO LANDLORD AFTER SET-OFF OF SECURITY DEPOSIT</b>	<b>\$533.50</b>

**Conclusion**

The Tenant's application is **dismissed**.

The Landlord's application for a monetary award for the cost of cleaning the rental unit is **dismissed**.

I hereby provide the Landlord with a Monetary Order in the amount of **\$533.50** for service upon the Tenant. This Order may be filed in the Provincial Court of British Columbia (Small Claims 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: April 16, 2012.

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Residential Tenancy Branch