



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### Dispute Codes:

MNSD, MNDC, and FF

### Introduction

This hearing was convened in response to an Application for Dispute Resolution, in which the Tenant applied for the return of her security deposit, a monetary Order for money owed or compensation for damage or loss, and to recover the filing fee from the Landlord for the cost of filing this application.

Both parties were represented at the hearing. They were provided with the opportunity to submit documentary evidence prior to this hearing, to present relevant oral evidence, to ask relevant questions, and to make relevant submissions to me.

The Tenant submitted documents to the Residential Tenancy Branch, copies of which were served to the Landlord. The Landlord acknowledged receipt of the Tenant's evidence and it was accepted as evidence for these proceedings. The Landlord submitted no evidence in regards to these proceedings.

### Issue(s) to be Decided

The issue to be decided is whether the Tenant is entitled to the return of her security deposit paid in relation to this tenancy, for moving costs, and to recover the cost of filing this Application for Dispute Resolution.

### Background and Evidence

The Landlord and the Tenant agree that this tenancy began on November 01, 2011; that the Tenant agreed to pay monthly rent of \$975.00; that the Tenant paid a security deposit of \$487.50 and rent for the month of November; that the advertisement from the rental unit indicated pets were not allowed; that on October 20, 2011 the Landlord agreed that a pet was permitted; that when the Tenant was moving into the rental unit the parties became aware that pets were not permitted in the residential complex; that the parties agreed that the tenancy could not continue as a result of the no pet policy; that the Tenant vacated the rental unit on November 06, 2011; and that on November 03, 2011 the Landlord paid \$1,262.50 to the Tenant, \$287.50 of which represented a refund of the security deposit and the remainder was a full rent refund.

The Landlord stated that on November 06, 2011 she paid \$200.00 in cash to the Tenant, which represented the remainder of the security deposit. The Tenant stated that she "can't recall" that payment; that the entire week was "kind of a blur"; and that it is "quite possible" that the cash payment was made.

The Tenant submitted receipts to show that she paid a moving company \$372.40 to move her belongings into storage on November 06, 2011 and \$478.80 to move her property to her now home on December 01, 2011. She is seeking compensation for these costs, which she contends would not have been incurred if the tenancy continued as per their agreement.

### Analysis

On the basis of the undisputed evidence presented at the hearing I find that the Landlord and the Tenant entered into a tenancy agreement for a tenancy that was to begin on November 01, 2011, which permitted the Tenant to have a pet in the rental unit.

I find that the Landlord materially breached the term of that tenancy agreement when it became apparent that the Tenant could not keep a pet in the rental unit due to the fact the residential complex prohibited pets. I find that the breach of this term was substantial and significant and that it excused the Tenant from performing any of her obligations under the tenancy agreement.

When faced with the option of either moving within days of the start of the tenancy or remaining in an environment where her pet was not welcome, I find that the Tenant acted reasonably when she agreed to move out of the rental unit. I find that this agreement significantly benefitted the Landlord, as the Landlord would not have been able to end this tenancy if the Tenant elected to remain in the rental unit and would potentially have faced penalties for contravening the rule regarding pets.

I find that the Landlord should have been aware of the policy prohibiting pets and she should not have agreed to allow pets in the rental unit. I find that the Landlord misled the Tenant and that the Landlord is, therefore, obligated to compensate the Tenant for costs arising from the breach of the tenancy agreement. I therefore find that the Landlord must pay the Tenant for the costs of remedying the breached agreement, which in these circumstances is \$851.20 for moving costs.

On the basis of the undisputed evidence presented at the hearing, I find that the Tenant paid a security deposit of \$487.50, \$287.50 of which was returned on November 03, 2011.

I find that the remaining \$200.00 of the security deposit was returned to the Tenant on November 06, 2011. In determining that this payment was made I was heavily influenced by the Landlord's testimony that it was made; by the Tenant's testimony that she simply cannot recall if the payment was made; and by the Tenant's

acknowledgment that it is quite possible that the payment was made.

As the full security deposit was returned by November 06, 2011, which is the day the Tenant vacated the rental unit, I dismiss the Tenant's application for the return of her security deposit.

### Conclusion

I find that the Tenant has established a monetary claim of \$901.20, which is \$851.20 in moving costs and \$50.00 as compensation for the cost of filing this Application for Dispute Resolution, and I am issuing a monetary Order in that amount. In the event that the Landlord does not voluntarily comply with this Order, it may be filed with the Province 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: July 03, 2012.

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Residential Tenancy Branch