



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

### Dispute Codes:

MNR, MND, MNSD, FF

### Introduction

This hearing was convened in response to cross applications.

On June 18, 2012 the Tenant filed an Application for Dispute Resolution, in which he applied for the return of his security deposit.

On August 14, 2012 the Landlord filed an Application for Dispute Resolution, in which the Landlord applied for a monetary Order for unpaid rent; for a monetary Order for damage; to keep all or part of the security deposit; and to recover the fee for filing this Application for Dispute Resolution.

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.

The Tenant stated that he served the Landlord with his Application for Dispute Resolution and Notice of Hearing, via registered mail, on June 19, 2012. The Landlord acknowledged receiving these documents in the mail sometime in June of 2012.

The Landlord stated that he served the Tenant with his Application for Dispute Resolution, the Notice of Hearing, and several pages of evidence, via registered mail, on August 16, 2012. The Tenant acknowledged receiving these documents and the Landlord's evidence was therefore accepted as evidence for these proceedings.

The Tenant submitted documents to the Residential Tenancy Branch on August 13, 2012. He stated that he served copies of these documents to the Landlord, via email, on August 10, 2012. The Landlord stated that he did not receive these documents. As the Landlord did not acknowledge receipt of the Tenant's evidence and it was not served in accordance with section 88 of the *Residential Tenancy Act (Act)*, these documents were not accepted as evidence for these proceedings.

The Landlord was advised that his application for compensation for damages to the rental unit was being refused, pursuant to section 59(5)(a) of the *Residential Tenancy Act (Act)*, because his Application for Dispute Resolution did not provide sufficient particulars of his claim for compensation for damages, as is required by section 59(2)(b)

of the Act. In reaching this conclusion, I was strongly influenced by the absence of a list of alleged damages that show how much compensation the Landlord is claiming for each damaged item. I find that proceeding with the Landlord's claim for damages at this hearing would be prejudicial to the Tenant, as the absence of particulars makes it difficult, if not impossible, for the Tenant to adequately prepare a response to the claims. The Landlord retains the right to file another Application for Dispute Resolution in which he claims compensation for damages to the rental unit.

### Issue(s) to be Decided

The issues to be decided are whether the Landlord is entitled to compensation for unpaid rent; whether the security deposit should be returned to the Tenant or retained by the Landlord; and whether the Landlord is entitled to recover the filing fee for the cost of this Application for Dispute Resolution.

### Background and Evidence

The Landlord and the Tenant agree that they entered into a fixed term tenancy agreement that began on July 01, 2011 and was to end on June 30, 2012, at which time the tenancy was to continue on a month-to-month basis. The parties agree that the Tenant was required to pay monthly rent of \$2,700.00.

The Landlord and the Tenant agree that on May 31, 2012 the Tenant informed the Landlord that he could not pay the rent for June, at which time they agreed they would sign a mutual agreement to end the tenancy on June 01, 2012. The parties agree that the Landlord wished to sign the mutual agreement on May 31, 2012 but the Tenant did not want to sign the agreement until an agreement was reached regarding the security deposit.

The Tenant stated that he and the Landlord inspected the rental unit together on June 01, 2012; that they each signed mutual agreement to end the tenancy on June 01, 2012; that the Landlord informed him that he would send him a copy of the mutual agreement to end the tenancy; that the Landlord never provided him with a copy of the mutual agreement to end the tenancy; that they agreed the Landlord could retain \$150.00 of the Tenant's security deposit; that the Tenant gave the Landlord written authorization, on the reverse of the mutual agreement, to retain \$150.00 of the security deposit; that the Landlord provided him with a cheque for the remaining \$1,200.00 of the security deposit on June 01, 2012; and that he attempted to cash the cheque for \$1,200.00 shortly after receiving it, at which point he learned that a stop payment had been placed on the cheque.

The Landlord stated that he did not sign a mutual agreement to end the tenancy on June 01, 2012 because he noted damage to the rental unit when the rental unit was inspected. He stated that he refunded a portion of the security deposit because the Tenant refused to leave until his security deposit had been refunded; that he wrote

the cheque with the intention of cancelling it as soon as the Tenant left the premises; and that he did cancel the cheque shortly after the Tenant left the premises.

The Landlord is seeking compensation for unpaid rent from June of 2012.

The Tenant stated that he is “pretty sure” that he wrote his forwarding address on the reverse of the mutual agreement to end the tenancy. The Landlord stated that he did not receive a forwarding address for the Tenant until he received the Tenant’s Application for Dispute Resolution sometime in June of 2012. He stated that he did not file his Application for Dispute Resolution seeking to retain the security deposit until August 14, 2012, as he had taken photographs of the damage to the rental unit on a camera which his wife had taken with her on holidays and he did not want to file the Application until he had photographs of the damage.

### Analysis

I favor the testimony of the Tenant, who stated that on June 01, 2012 he and the Landlord signed a mutual agreement to end the tenancy on June 01, 2012, over the testimony of the Landlord, who stated that they did not sign a mutual agreement to end the tenancy.

In *Bray Holdings Ltd. v. Black* BCSC 738, Victoria Registry, 001815, 3 May, 2000, the court quoted with approval the following from *Faryna v. Chorny* (1951-52), W.W.R. (N.S.) 171 (B.C.C.A.) at p.174:

*The credibility of interested witnesses, particularly in cases of conflict of evidence, cannot be gauged solely by the test of whether the personal demeanour of the particular witness carried conviction of the truth. The test must reasonably subject his story to an examination of its consistency with the probabilities that surround the current existing conditions. In short, the real test of the truth of the story of a witness in such a case must be its harmony with the preponderance of the probabilities which a practical and informed person would readily recognize as reasonable in that place and in those conditions.*

In the circumstances before me, I find the version of events provided by the Tenant to be more probable for the following reasons:

- The parties agree that they met on June 01, 2012 for the purposes of signing a mutual agreement to end the tenancy
- The Landlord’s contention that he refused to sign the mutual agreement simply because the rental unit was damaged is illogical, as the more logical response would be to end the tenancy and seek financial compensation for the damage
- The fact that the Landlord provided the Tenant with a cheque for \$1,200.00 which he fully intended to cancel is indicative of deceptive behavior, which gives credibility to the Tenant’s testimony that the Landlord promised to forward a copy

of the mutual agreement to end the tenancy but did not follow through with that promise

- In the event the Tenant was refusing to leave the rental unit without a portion of his security deposit being refunded, as the Landlord contends, I find it improbable that the Tenant would have left without signing a mutual agreement to end the tenancy, given how important this issue was to the Tenant.

I find, on the balance of probabilities that the Landlord and the Tenant mutually agreed to end this tenancy on June 01, 2012. I therefore find that the Tenant was not obligated to pay rent for the month of June and I dismiss the Landlord's application for unpaid rent from June of 2012.

On the basis of the undisputed evidence presented at the hearing, I find that the Tenant paid a security deposit of \$1,350.00. I accept the Tenant's testimony that on June 01, 2012 he gave the Landlord written authorization to retain \$150.00 of this deposit on the reverse of the mutual agreement to end the tenancy. I favor his testimony over the testimony of the Landlord, who stated that he only received verbal authorization to retain this amount, as the Tenant would have no reason to fabricate this testimony. Alternatively, the Landlord could not concede this point as he does not acknowledge the existence of a mutual agreement to end the tenancy.

As the Tenant gave the Landlord written authorization to retain \$150.00 from the security deposit, I find that the Landlord was authorized to keep this amount at the end of the tenancy. I therefore find that the Landlord held a security deposit of \$1,200.00 at the end of the tenancy, which he was obligated to return in accordance with section 38 of the *Act*.

Section 38(1) of the *Act* stipulates that within 15 days after the later of the date the tenancy ends and the date the landlord receives the tenant's forwarding address in writing, the landlord must either repay the security deposit and/or pet damage deposit plus interest or make an application for dispute resolution claiming against the deposits.

In these circumstances, I find that I have insufficient evidence to conclude that the Tenant provided the Landlord with his forwarding address on June 01, 2012. In reaching this conclusion I was heavily influenced by the Tenant's inability to testify, with certainty, that he provided a forwarding address on June 01, 2012 and by the Landlord's testimony that he did not receive a forwarding address on that date.

On the basis of the Landlord's testimony, I find that the Landlord received a forwarding address for the Tenant sometime in June, when he was served with the Tenant's Application for Dispute Resolution. I find that he was obligated to comply with section 38(1) of the *Act* once he received that forwarding address in June of 2012. I find that the Landlord failed to comply with section 38(1) of the *Act* after receiving the forwarding address in June, as he has not repaid the security deposit and he did not file Application for Dispute Resolution until August 14, 2012.

Section 38(6) of the *Act* stipulates that if a landlord does not comply with subsection 38(1), the Landlord must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable. As I have found that the Landlord did not comply with section 38(1) of the *Act*, I find that the Landlord must pay the Tenant double the security deposit that remained due to the Tenant at the end of the tenancy, which was \$1,200.00.

### Conclusion

I find that the Landlord has failed to establish a monetary claim and I therefore dismiss his application to recover the filing fee from the Tenant for the cost of the Landlord's Application for Dispute Resolution.

I find that the Tenant has established a monetary claim, in the amount of \$2,400.00, which is double the security deposit that remained due to the Tenant at the end of the tenancy. Based on these determinations I grant the Tenant a monetary Order for the amount \$2,400.00. 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.

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: August 22, 2012.

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Residential Tenancy Branch