



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

### Dispute Codes

For the tenant: MNDC FF O  
For the landlord: OPR OPL FF

### Introduction

This hearing was convened as a result of the cross applications of the parties for dispute resolution under the *Residential Tenancy Act* (the “Act”).

The tenant applied for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, to recover the filing fee, and “other”, however, did not specify details pertaining to “other” in their application for dispute.

The landlord amended her application prior to the hearing and applied for a monetary order for unpaid rent or utilities, to keep all or part of a security deposit and to recover the filing fee.

The hearing process was explained to the parties and an opportunity was given to ask questions about the hearing process. Thereafter the parties gave affirmed testimony, were provided the opportunity to present their evidence orally and in documentary form prior to the hearing, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Preliminary Matters

Section 59 of the *Act*, provides the authority to decline an application when it does not comply with 59(2)(b) of the *Act*, by disclosing the full particulars of the claim. The tenant did not provide details of her claim for a monetary order in her application as required. Therefore, the application has been declined and the tenant has leave to reapply. This decision does not extend any applicable time limits under the *Act*.

The landlord requested to amend her monetary claim from \$821.00 to \$321.00. The request was granted as the amendment did not prejudice the other party. The landlord also clarified that she withdrew her original request for an order of possession as the tenant had vacated the rental unit.

The landlord's application proceeded and during the hearing, the merits of the landlord's application were considered.

### Issues to be Decided

- Should the landlord be granted a monetary order for unpaid rent or utilities?
- Should the landlord be granted a monetary order to keep all or part of a security deposit?
- Should the landlord recover the filing fee?

### Background and Evidence

The parties agreed that a month to month tenancy agreement began on November 1, 2011. Monthly rent in the amount of \$800.00 was due on the first day of each month.

On May 5, 2012, the landlord issued a 2 Month Notice to End Tenancy for Landlord's Use of Property. The tenant provided a 10 Day Notice to the landlord on May 18, 2012, stating that she would be vacating early on May 31, 2012, due to the 2 Month Notice. The parties agree that the tenant did not vacate the rental unit until June 2, 2012.

The landlord stated her monetary claim was for \$321.00 consisting of \$256.00 for lost wages due to making a claim for dispute resolution, the \$50.00 filing fee, and \$15.00 for garbage disposal.

The landlord provided 11 photos which had text added to the photos. The text indicated a date of June 2, 2012 and a description of what was showing in the photos. Some of the photos show garbage bags, while other photos show vehicles, children's items and other items. The tenant disputed the authenticity of the photos by stating that the photos were taken at different times and dates and not all on June 2, 2012. The landlord testified that although the photos show a date of June 2, 2012, the photos were actually taken on June 5, 2012. The tenant disputed the landlord's comment by stating the photo of the vehicles would have had to have been taken much earlier.

The landlord provided a copy of a receipt for \$15.00 which she indicates represents the cost of removing the tenant's garbage after the tenant vacated. The landlord testified that the tenant left items in the refrigerator and that one of the photos provides evidence of those items. The tenant disputed the landlord's testimony by stating that the photo shows the items the tenant removed the day she was vacating and that if the items were in the refrigerator. The tenant wondered why the landlord would take a photo of the items outside in a box versus inside the refrigerator, if she believed the items were left inside the refrigerator.

### Analysis

Based on the oral testimony and documentary evidence before me, and on the balance of probabilities, I find the following.

### Test for damages or loss

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in sections 7 and 67 of the *Act*. Accordingly, an applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

In this instance, the burden of proof is on the landlord to prove the existence of the damage/loss and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the tenant. Once that has been established, the landlord must then provide evidence that can verify the value of the loss or damage. Finally, it must be proven that the landlord did everything possible to minimize the damage or losses that were incurred.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

**Claim for loss of time due to dispute resolution application** – The *Act* does not provide for a remedy for the landlord's time in making an application for dispute resolution under the *Act*. Given the above, **I dismiss** the landlord's claim for \$256.00 in lost wages due to the time involved in making an application for dispute resolution, without leave to reapply.

**Claim for garbage disposal** – The landlord testified that although the photos submitted as evidence were dated June 2, 2012, the photos were taken on a different date, June 5, 2012. Given the inconsistency between the documentary evidence and the landlord's testimony, and taking into account that the tenant disputed the authenticity of the photos, I give the photos little weight in the consideration of my Decision.

The landlord submitted a letter from a third party who stated in the letter that the "...damage and mess left (by the tenant) was uncalled for...", however, the letter does not specifically mention garbage. As a result, **I find** that the landlord has not met the burden of proof in her claim for \$15.00 for garbage disposal. The landlord has failed to provide proof that the tenant violated the *Act*, regulation or tenancy agreement. At the very least, I would have expected the landlord to provide photos dated the same date the photos were taken or to arrange to have a witness testify as to the garbage left behind at the end of the tenancy, or to have provided a written statement from a witness specifically mentioning whether garbage was left behind by the tenant. Therefore, **I dismiss** the landlord's claim for \$15.00 for garbage disposal due to insufficient evidence, without leave to reapply.

As the landlord was not successful in her application, I **do not** grant the landlord the recovery of the filing fee.

### Conclusion

The landlord's monetary claim is dismissed, without leave to reapply.

I do not grant the landlord the recovery of the filing fee.

For the benefit of both parties, I am including a copy of *A Guide for Landlords and Tenants in British Columbia* with my Decision.

This decision is final and binding on the parties, unless otherwise provided under the *Act*, and 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 4, 2012

---

Residential Tenancy Branch