



# 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 an Agent for the Tenant applied for the return of the 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. The Agent for the Tenant stated that she is the Tenant's mother; that the Tenant passed away without a will; that she is the only living relative; and that she has the right to represent the Tenant in this matter. The Agent for the Tenant submitted a letter from legal counsel which identifies her as next of kin and as the administratrix of the Tenant's estate. The Landlord did not dispute the Agent for the Tenant's right to represent the Tenant in this matter.

The Landlord and the Agent for the Tenant 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 Agent for the Tenant submitted documents to the Residential Tenancy Branch, copies of which were served to the Landlord. The Landlord acknowledged receipt of the evidence and it was accepted as evidence for these proceedings.

The Landlord submitted documents to the Residential Tenancy Branch, copies of which were served to the Agent for the Tenant. The Agent for the Tenant acknowledged receipt of the Landlord's evidence and it was accepted as evidence for these proceedings. The Agent for the Tenant stated that only of the four photocopied photographs submitted by the Landlord could be viewed, as the others were too dark.

### **Issue(s) to be Decided**

Is the Agent for the Tenant entitled to the return of the security deposit, a rent refund, and to recover the cost of filing this Application for Dispute Resolution?

### Background and Evidence

The Landlord and the Agent for the Tenant agree that the Landlord and the Tenant entered into a written tenancy agreement that began on February 09, 2012; that the original agreement was for a fixed term that ended on January 13, 2013; that the parties amended the end date of the fixed term to July 13, 2013; that the tenancy agreement required the Tenant to pay monthly rent of \$1,000.00 by the first day of each month; that the tenancy agreement stipulated that rent would increase by \$250.00 per month for each additional occupant in the rental unit; and that the Tenant paid a security deposit of \$500.00.

The Landlord stated that on March 01, 2012 the rent was increased to \$1,250.00 because he believed the Tenant had at least one other person living in the rental unit. He based this belief on the fact that the Tenant installed a locking door handle on his bedroom door, which he does not believe he would have done if he was living alone; because on one occasion when he inspected the rental unit he observed bedding on the couch in the living room; and because every time he has been at the rental unit there have been other people in the unit. He stated that when he asked the Tenant if other people were living in the unit the Tenant stated that he had "people coming and going".

The Agent for the Tenant stated that she believed her son was living alone.

The Landlord and the Agent for the Tenant agree that Tenant paid a total of \$17,000.00 in rent, some of which represented future rent payments.

The Landlord and the Agent for the Tenant agree that the Tenant passed away on September 12, 2012 and that the keys to the unit were returned to the Landlord on September 16, 2012 or September 17, 2012.

The Landlord stated that he did not begin advertising the rental unit until sometime in early November. He stated that he could not advertise the unit earlier as it needed to be cleaned and painted.

The Landlord stated that the ceiling was filthy and there was blood splattered on the wall in several locations. The Landlord submitted one photograph of a small portion of the wall which is splattered with a substance resembling blood. The Landlord submitted no other photographs to show the rental unit needed cleaning. He stated that he had to remove some end tables and a key board at the end of the tenancy, but that the remainder of the furniture in the rental unit belonged to the Landlord.

The Agent for the Tenant submitted photographs of the rental unit that were taken by the coroner prior to her brother removing some of the property from the rental unit. The Landlord agreed that some property shown in the photographs had been removed prior to the keys being returned.

The Agent for the Tenant submitted a letter from her brother, in which the brother declared that he spent an entire day cleaning the rental unit and that he left some personal property and bags of garbage in the rental unit.

The Agent for the Tenant stated that on November 01, 2012 she provided the Landlord with a forwarding address, via registered mail. The Landlord stated that he received this forwarding address on November 06, 2012.

The Landlord and the Agent for the Tenant agree that the Landlord provided the Agent for the Tenant with a cheque, dated November 26, 2012, in the amount of \$4,186.43. The Landlord contends this is all the money due to the Tenant, including a rent refund and the return of the security deposit. The Agent for the Tenant stated that she believed this payment was a rent refund only.

The Landlord stated that he did not have written authorization to retain any portion of the security deposit and that he did not file an Application for Dispute Resolution claiming against the security deposit because he believed they had reached a verbal agreement for all the money owed.

The Agent for the Tenant stated that she asked for a rent refund of \$6,000.00, which was based on her understanding that the Tenant was obligated to pay \$1,250.00 in rent for most of the tenancy and because the Landlord told her that her son would have to pay an additional 3 month's rent. The Landlord stated that he does not recall telling the Agent for the Tenant that the Tenant would have to pay an additional three month's rent.

A copy of a letter from the Agent for the Tenant's legal counsel was submitted in evidence, in which the Agent appears to be seeking a rent refund of \$6,000.00. There is nothing in this letter that indicates this payment was to serve as a refund of the security deposit.

### Analysis

On the basis of the undisputed evidence, I find that the Tenant entered into a tenancy agreement that required him to pay monthly rent of \$1,000.00.

I find that the Landlord submitted insufficient evidence to show that another person was living in the rental unit. I find it entirely possible that a tenant might install a locking door handle on a bedroom if they wished to prevent guests from entering this area of the unit. I find it entirely possible that the bedding the Landlord observed on the couch was being used by an overnight guest, rather than someone living in the rental unit on a full time basis. I find it entirely possible that the Landlord frequently observed people in the rental unit because the Tenant had a lot of guests. I find that the Tenant's declaration that he had people "coming and going" could simply mean that he has a lot of guests, rather than he had someone living with him on a full time basis.

In determining the matter of additional occupants, I was further influenced by the testimony of the Tenant's mother, who stated that she believed her son was living alone. Finally, I was influenced by the absence of evidence that shows the Tenant agreed that he had another person living in the rental unit and that he agreed to pay the increased rent.

As the Landlord has failed to establish that another person was living in the rental unit, rather than visiting the unit, I find that the Landlord was not entitled to collect more than \$1,000.00 per month in rent.

I find that this tenancy ended, pursuant to section 44(1)(d) of the *Residential Tenancy Act (Act)*, when the keys were returned to the Landlord, which was no later than September 17, 2013. I therefore find that the Tenant was obligated to pay rent for February, March, April, May, June, July, August, and September of 2012, in the amount of \$8,000.00. As the Tenant has paid \$17,000.00 in rent, I find that he has overpaid his rent by \$9,000.00.

I cannot conclude that the Landlord is entitled to rent for October of 2012, as the Landlord did not make reasonable attempts to re-rent the unit for October of 2012, as is required by section 7(2) of the *Act*. While I accept that some additional cleaning was required at the end of the tenancy, I find that the Landlord submitted insufficient evidence to show that the condition of the rental unit at the end of the tenancy prevented the Landlord from advertising for new tenants for October 01, 2012.

In making this determination, I was heavily influenced by the photographs that were submitted in evidence by the Agent for the Tenant. Even if no cleaning had occurred after these photographs were taken, which is not the case, I find that with reasonable diligence this rental unit could have been cleaned and repainted within a week of the tenancy ending and it could have then been advertised for October.

On the basis of the undisputed evidence, I find that the Tenant paid a security deposit of \$500.00; that the Tenant did not authorize the Landlord, in writing, to retain any portion of the security deposit; that the Landlord did not file an Application for Dispute Resolution claiming against the deposit; and that the Landlord had received a forwarding address for the Tenant, in writing, by November 06, 2012.

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 the circumstances before me, I find that the Landlord failed to comply with section 38(1) of the *Act*, as the Landlord did not file an Application for Dispute Resolution or repay the security deposit within fifteen days of the date the tenancy ended and the date he received the forwarding address in writing. Even if I were to accept that the \$4,186.43 payment included a return of the security deposit, that payment was not

made until November 26, 2012, which is outside the legislated timeline.

Section 38(6) of the *Act* stipulates that if a landlord does not comply with subsection 38(1) of the *Act*, the Landlord must pay the tenant double the amount of the security deposit. As I have found that the Landlord did not comply with section 38(1) of the *Act*, I find that the Landlord must pay double the security deposit that was paid.

The dispute resolution process allows an Applicant to claim for compensation or loss as the result of a breach of *Act*. With the exception of compensation for filing the Application for Dispute Resolution, the *Act* does not allow an Applicant to claim compensation for costs associated with participating in the dispute resolution process. I therefore decline to consider the Agent for the Tenant's claim for legal fees, as they are costs which I am not authorized to award.

I find that the Application for Dispute Resolution has merit and that the Agent for the Tenant is entitled to recover the fee for filing this Application.

### Conclusion

I find that the Tenant has established a monetary claim of \$10,050.00, which is comprised of double the security deposit, a rent refund of \$9,000.00, and \$50.00 as compensation for the cost of filing this Application for Dispute Resolution. I find that this claim must be reduced by the \$4,186.43 that has already been returned to the Agent for the Landlord.

On the basis of these calculations, I grant a monetary Order in the amount of \$5,863.57. 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: March 26, 2013

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Residential Tenancy Branch

