



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MSD, MNR, MNDC, FF

### Introduction

This hearing was convened in response to applications by the tenant and the landlord.

The tenant's application is seeking orders as follows:

1. Return of double the security deposit; and
2. To recover the cost of filing the application.

The landlord's application is seeking orders as follows:

1. For a monetary order for unpaid rent;
2. For damages to the unit, site or property;
3. To keep all or part of the security deposit; and
4. To recover the cost of filing the application.

Both parties appeared, gave testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

### Preliminary issues

In this case, the tenant did not submit their evidence when their application was filed on March 28, 2013. The tenant submitted their evidence to the Residential Tenancy Branch on May 15, 2013, which does not comply with the rule 3.5 of the Residential Tenancy Branch Rules of Procedures as the evidence was required to be received five business days prior to the hearing.

Further, the landlord had not received the tenant's evidence package as it was sent by registered mail on May 15, 2013. Documents sent this way must allow a minimum of five days for the package to arrive and five days for the evidence to be review.

In this case, the landlord's application was filed on March 19, 2013, at Service BC. The landlord was informed by Service BC that they would contact them when a date for the hearing was scheduled and notice of hearing would be produced.

The evidence of the landlord was that he was not contacted by Service BC and when he followed up on their application the documents were missing. The landlord stated on May 14, 2013, he received copies of the notice of hearing from Service BC and they were served on the tenant by registered mail.

The tenant acknowledged service of the landlord's documents. As a result of the delay, which was not the fault of the landlord, it would be unfair to dismiss their application.

As a result, the tenant was given an opportunity to have both matters adjourned to provide the tenant with a fair opportunity to review the landlord claim and an adjournment would also give the landlord an opportunity to receive and review the tenant's evidence. However, the tenant did not want the matters adjourned.

Therefore, both applications proceeded at today's hearing. However, the evidence of the tenants was excluded for not complying with the rules of procedures.

#### Issues to be Decided

Is the tenant entitled to the return of double the security deposit?

Is the landlord entitled to a monetary order for unpaid rent and utilities?

Is the landlord entitled to a monetary order for damage to the unit, site or property?

Are either party entitled to recover the cost of filing their application?

#### Background and Evidence

The parties entered into a fixed term tenancy which began on September 1, 2011, and was to expire in 24 months. Rent in the amount of \$1,395.00 was payable on the first of each month. A security deposit of \$647.50 was paid by the tenant. Filed in evidence is a copy of the tenancy agreement and addendum.

The parties agreed a move-in and move-out condition inspection report was completed.

The tenant claims as follows:

a.	Double the security deposit	\$ 1,295.00
b.	Filing fee	\$ 50.00
	<b>Total claimed</b>	<b>\$ 1,345.00</b>

The tenant testified that he wrote his forwarding address on the move-out condition inspection report. During his testimony the tenant changes his testimony stating that the landlord wrote his forwarding address at the top of the report.

The tenant testified he also provided his forwarding address by email, however, there was no acknowledgement that the email was received.

The landlord testified that the tenant did not provide his forwarding address on the move-out condition inspection report and he did not write any address on the top of the form. Filed in evidence is a copy of the move-out condition inspection report.

The landlord claims as follows:

a.	Recover cost of broken blind	\$ 127.68
b.	Cost to deconstruct the fence	\$ 75.00
c.	Short payments of rent	\$ 1,874.00
d.	Return of rent incentive 26%	\$ 110.50
e.	Filing fee	\$ 50.00
	<b>Total claimed</b>	<b>\$ 2,137.18</b>

Recover cost of broken blind

The landlord testified that the tenant broke the bedroom blind and the blind was required to be replaced. The landlord stated the blind was four years old. The landlord seeks compensation in the amount of \$127.63.

The tenant testified that he admits the blind was broken. The tenant stated that he thinks the cost the landlord paid for the blind was too high and he could have replaced it at a lower cost.

Cost to deconstruct the fence

The landlord testified that the tenant constructed a fence during the tenancy, and he was asked to deconstruct the fence prior to the tenancy ending. The landlord stated the fence was removed, however, it was dragged behind the garage and a six foot section was required to be deconstructed. The landlord seeks to recover the cost of \$75.00.

The tenant testified that he was given permission to construct the fence and the materials used were the landlords. The tenant stated he was surprised that the landlord requested the removal at the end of tenancy. The tenant stated he did deconstruct a large portion, however, agreed there was a section which was not deconstructed.

Unpaid rent

The landlord testified that the gross rent for the rental unit is \$1,395.00, with a monthly bonus of \$100.00 if rent is paid on time as stated in clause #9 of the addendum to the tenancy agreement. The landlord stated clause #16 also stated that the tenant was required to provide posted-dated cheque, and those cheques were not received which resulted in late payment of rent. Filed in evidence is a rent ledger.

The tenant argued that his rent had always been \$1,270.00 and there was no agreement that the monthly rent was \$1,395.00. The tenant stated he was only late paying rent because the landlord did not come and pickup the cheque on the first of the month as the rent cheque was left inside the "cat house". The tenant admits he was late once and that was in January 2012.

The landlord argued that the tenant has been asked several time to either provide post-dated cheques or to provide email transfers for rent payments. The landlord stated the emails that he has submitted as documentary evidence supports that the tenant is late and that the tenant has been warned that rent needs to be paid when due. Filed in evidence are several emails of conversations between the parties.

The landlord testified that the tenant also failed to pay the full amount of rent for January, March, April and May 2012. The landlord stated that the tenant withheld from his rent the cost of the utilities, that the tenant alleged was owed to him by the occupants in the other unit. However, the tenant did not provided any copies of the utilities invoices as requested.

The tenant testified that he was required to have the utility accounts in his name and that when the occupant in the other unit did not pay his portion the tenant would deduct that amount from his rent.

The landlord argued that even after the occupant in the lower suite paid those utility to the tenant, the tenant failed to pay the full amount of rent due.

#### *Return of rent incentive*

The landlord testified that he provided the tenant with an additional rent incentive for signing a two year fixed term agreement and seeks to recover a portion of the rent incentive. The landlord stated this agreement was not in writing.

The tenant denied any rent incentive.

#### *Analysis*

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

In a claim for damage or loss under the Act or tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities.

To prove a loss and have one party pay for the loss requires the claiming party to prove four different elements:

- Proof that the damage or loss exists;
- Proof that the damage or loss occurred due to the actions or neglect of the Respondent in violation of the Act or agreement;
- Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
- Proof that the Applicant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

Where the claiming party has not met each of the four elements, the burden of proof has not been met and the claim fails. In this case, the landlord has the burden of proof to prove their claim.

Section 67 of the Act provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

#### Tenant's Application

In this case, the evidence of the tenants was conflicting. The tenant first testified that he wrote his forwarding address on the move-out condition inspection report, however, later the tenant change his testimony and said the landlord wrote it on the top of the report. This was denied by the landlord. The move-out condition inspection report filed as evidence does not contain the tenant's forwarding address.

The evidence of the tenant was that he also sent his forwarding address by email, however, the landlord did not acknowledge receiving the email.

Under the Act, where a tenant gives a document to the landlord, service of the document must comply with section 88 of the Act. In this case, the document was sent via email, which is not an approved method of service under the Act. As a result, I find the tenant in not entitled to double the security deposit.

#### Landlord's Application

##### *Recover cost of broken blind*

In this case, the tenant admits damaging the bedroom blind. The evidence of the landlord was the blind was four years old at the end of the tenancy. The evidence was it would cost \$127.68 to have replaced.

Under the Residential Policy Guideline #40, if an item was damaged by the tenant, the age of the item may be considered when calculating the tenant's responsibility for the cost of replacement. As, I have determined that the blinds had a useful life span of ten years, and the blind was four years old, the landlord is entitled to the depreciated value of sixty percent. The evidence of the landlord's agent was it cost \$127.68 to replace the blind. Therefore, I find the landlord is entitled to compensation for the cost of replacing the blind in the amount of **\$76.68**.

#### Cost to deconstruct the fence

In this case, the tenant built a fence with the landlord permission. Under the Residential Policy Guidelines #1, if the tenant leaves a fence on the property that the landlord had agreed could be erected by the tenant and at the end of the tenancy the landlord no

longer wishes the fence to remain, the landlord is responsible for the cost of removal, unless there is an agreement to the contrary. As a result, I find the landlord is not entitled to compensation for deconstructing the fence. Therefore, I find the landlord is not entitled to compensation and this portion of the claim is dismissed.

Unpaid rent - bonus

In this case, the evidence of the landlord was the monthly rent was \$1,395.00 and the tenant received a rent incentive of \$25.00 per month for signing a two year lease. The evidence was that the agreement also provided the tenant with a bonus of \$100.00 per month, if rent was not late. The evidence of the tenant was the monthly rent was \$1,270.00 and that there was never an agreement that rent would be \$1,395.00 per month. The tenant did not deny there was a signed tenancy agreement.

I find the testimony provided by the tenant does not sound reasonable based on the documentary evidence, as the tenancy agreement and addendum are both signed by the tenant and both indicate the monthly rent was \$1,395.00. Therefore, I find the monthly rent was \$1,395.00, as stated in the tenancy agreement and addendum.

In clause #19 of the tenancy agreement addendum, it stated the tenant was to provide post-dated cheques for rent. In clause #9 of the same addendum it stated, if rent was not late the tenant was entitled to receive a bonus of \$100.00 per month.

However, in these circumstances the tenant did not provided post-dated cheques and would leave cheques in the "cat house" for the landlord to retrieve. The evidence of the tenant was that these cheques were always in the "cat house" on the first of the month, with the exception of January 2012, rent.

The documentary evidence of the landlord, the emails, support the landlord's position that he wrote to the tenant on more than one occasion requesting that the rent payments be made on time. The emails also support the tenant has provided conflicting testimony when he stated that rent was late on one occasion and that was January 2012.

As examples, the email dated June 3, 2012, from the tenant stated, "The cheque broke on the way so I had to write a new one." The email dated November 3, 2012, from the landlord was that he had made several attempts to pick up rent, and the tenant response was "The cheques will be their tonight."

Under the Act it is the tenants responsible to ensure rent is paid when due under the terms of the tenancy. Therefore, based on the balance of probability, I find the tenant breach section 26 of the Act, when they failed to pay rent on time, with the exception of September 1, 2011, October 1, 2013 and February 1, 2013, as provided by the tenant's ledger filed in evidence. As a result, the tenant was not entitled to receive the bonus of \$100.00, as rent was not paid on time.

*Unpaid rent – rent withheld*

The tenant admits that he withheld rent due to another occupant not paying his portion of the utilities, which were in his name. Under section 26 of the Act, the tenant cannot withhold rent, unless the tenant has a right under the Act, such an order from an Arbitrator, whether or not the landlord complies with the Act.

While a term in a tenancy agreement which required a tenant to put the utility bills in their name for premises that the tenant does not occupy, may be found unconscionable. The tenant did not apply for dispute resolution to have the term of the agreement viewed.

In this case, the tenant felt justified in deducting these amounts from his rent, however, the tenant did not have the authority of an Arbitrator to deduct any portion of rent. As a result, I find the tenant breached section 26 of the Act.

In light of the above, I find the landlord is entitled to recover, the bonus and the unpaid rent in the amount of **\$1,874.00**.

*Return of rent incentive*

In this case, the evidence of the landlord was that he provided the tenant with a rent incentive for signing a two year agreement. The landlord seeks to recover 26% of the incentive taken. The tenant disputed this claim. While I accept the tenant was receiving a credit of \$25.00 per month, I find the landlord has provided insufficient evidence to support that this was a rent incentive and that the tenant agreed to repay any portion should the two year agreement not be fulfilled, as there is no term in the tenancy agreement or addendum. As a result, I find the landlord is not entitled to compensation as this portion of the claim is dismissed.

I find that the landlord as established a total monetary claim of **\$2,000.68** comprised of the above described amounts and the \$50.00 fee paid for this application.



I order that the landlord retain the deposit and interest of **\$647.50** in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of **\$1,353.18**.

This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

Conclusion

The tenant's application is dismissed.

The landlord is granted a monetary and may keep the security deposit in partial satisfaction of the claim and the landlord is granted a formal order for the balance due.

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: May 27, 2013

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Residential Tenancy Branch

