



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Dispute Codes:**

MNSD, MND, MNR, MNDC, OPB, FF

### **Introduction**

This hearing was convened in response to cross-applications by the parties for dispute resolution. The landlord filed on June 11, 2013 pursuant to the *Residential Tenancy Act* (the Act) for Orders as follows;

1. A monetary Order for damage and loss – Section 67
2. A monetary Order for Unpaid rent – section 67
3. An Order of Possession for breach of an agreement – Section 55
4. An Order to recover the filing fee for this application (\$50) - Section 72.

The tenant filed on September 03, 2013 for Orders as follows:

1. An Order for return of security deposit - Section 38
2. An Order to recover the filing fee for this application - Section 72.

Both parties attended the hearing and were given opportunity to settle their dispute, present relevant evidence, and make relevant submissions. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present. The parties each acknowledged receiving all the evidence of the other. The parties were apprised that only relevant evidence will be considered in the Decision. As the tenancy has ended the landlord's request for an Order of Possession is dismissed, as it is not necessary.

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

Is the landlord entitled to the monetary amounts claimed?

Is the tenant entitled to the monetary amounts claimed?

Each party bears the burden of proving their respective claims.

### **Background and Evidence**

The relevant evidence in this matter is as follows. The tenancy began as a written tenancy agreement beginning October 26, 2012. A copy of the contractual agreement signed by the parties in October 2012 was submitted into evidence. At the outset of the tenancy the landlord collected a security deposit in the amount of \$1150.00 which the landlord retains in trust. The parties agree there was a *move in* and *move out* mutual condition inspections conducted. It is undisputed the tenant vacated May 26, 2013 pursuant to notifying the landlord by e-mail on April 25, 2013 they would vacating at the end of May (2013).

The landlord testified they received the tenant's e-mail notification on the same day; and, despite not receiving a Notice to End in compliance with the Act the landlord testified they acted to mitigate potential losses of revenue by immediately advertising the rental unit on-line via Craigslist, and several other on-line social media outlets. The landlord testified they received some enquiries to their on-line efforts and provided showings to prospective tenants but that despite their efforts were unable to secure a new tenant for June 2013, but did so for July 2013. The tenant agreed they provided the landlord with e-mail notification of their intent to vacate at the end of May 2013, as e-mail was their primary method of communication. The landlord sought loss of revenue for June 2013 in the amount of \$2300.00.

The parties summarily discussed the landlord's claim that at the end of the tenancy there were miscellaneous deficiencies of the rental unit for which the landlord claims the tenant is responsible. These claims are that the carpeting was compromised by staining and that portions of the unit were left unclean, and that some painting was required. The tenant generally disputed the landlord's claims; however, the parties agreed that the landlord could retain \$300.00 of the tenant's security deposit as full and final satisfaction of the landlord's claim respecting any and all purported deficiencies of the unit.

The tenant and landlord agree that the tenant provided their written forwarding address on May 27, 2013. The tenant sought return of their security deposit plus compensation as permitted under Section 38 of the Act.

### **Analysis**

The onus is on the respective parties to prove their claims. On preponderance of all the evidence submitted, and on balance of probabilities, I find as follows:

Tenant's claim

**Section 38(1)** of the Act, in relevant part, provides as follows

**38(1)** Except as provided in subsection (3) or (4) (a), within 15 days after the later of

38(1)(a) the date the tenancy ends, and

38(1)(b) the date the landlord receives the tenant's forwarding address in writing,

the landlord **must** do one of the following:

38(1)(c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;

38(1)(d) file an application for dispute resolution to make a claim against the security deposit or pet damage deposit.

and,

**38(6)** If a landlord does not comply with subsection (1), the landlord

38(6)(a) may not make a claim against the security deposit or any pet damage deposit, and

38(6)(b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

I find that the landlord did make application for dispute resolution within 15 days of receiving the tenant's forwarding address in writing and therefore the *doubling* provisions of Section 38(6) of the Act do not apply.

Landlord's claim

Based on the testimony of the parties, and on preponderance of their submitted document evidence and testimony, I find that while the Act requires that a tenant must give a Notice to End a tenancy in accordance with the Act, the Act does not attach a penalty for failing to do so, or automatically entitles the landlord to future rent. There is no provision in the Act whereby tenants who vacate without providing the required Notice will be automatically held liable for loss of rent or revenue for the months following. However, Section 7 of the Act *does* provide as follows:

## 7. Liability for not complying with this Act or a tenancy agreement

- 7(1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.
- 7(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

An application for loss must meet the above test. It is clear the tenant did not provide their Notice to End as prescribed by the Act. And, despite the landlord's absence of document evidence proving mitigation I accept the landlord's evidence they immediately acted on the tenant's information of April 25, 2013 that they were vacating at the end of May 2013. It must be noted I have no evidence from the landlord they would have done anything different had they been provided with written Notice to End as prescribed by the Act.

I find the landlord accepted the tenancy was coming at an end and acted on that information. I find the landlord may have made a reasonable effort to minimize their losses by advertising the rental unit thereby meeting the second part of the test established in section 7(2). However, the landlord failed to meet the first part of the test established in section 7(1) in that they did not prove on the balance of probabilities that their loss resulted from the tenant's failure to comply with the Act - by the tenant not providing them with *written*, versus, *e-mailed* Notice to End. Rather, I find the landlord's loss resulted from a lack of tenants interested in this rental property for the month of June 2013. As a result, the portion of the landlord's claim for loss of rent for June 2013 is hereby **dismissed**, without leave to reapply.

As a result of all the above, I find the landlord is owed \$300.00 for damages, and the tenant is effectively owed the balance of their original security deposit. As both parties are entitled to their filing fees they mathematically cancel out.

The original security deposit is offset in the awards made herein. Therefore: *Calculation for Monetary Order*,

tenant's original security deposit	\$1150.00
<i>landlord's award</i>	- \$300.00
<b>Total monetary award for tenant</b>	<b>\$850.00</b>

**Conclusion**

The parties' respective applications, in part, have been granted.

**I Order** that the landlord may retain \$300.00 from the tenant's security deposit and return the balance of \$850.00. **I grant** the tenant a Monetary Order under Section 67 of the Act for the amount of **\$850.00**. If necessary, this Order may be filed in the Small Claims Court and enforced as an Order of that Court.

**This Decision is final and binding on both parties.**

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: September 24, 2013



# Residential Tenancy Branch

RTB-136

**All decisions are binding and both landlord and tenant are required to comply.**

The RTB website ([www.rto.gov.bc.ca](http://www.rto.gov.bc.ca)) has information about:

- How and when to enforce an order of possession:  
Fact Sheet RTB-103: *Landlord: Enforcing an Order of Possession*
- How and when to enforce a monetary order:  
Fact Sheet RTB-108: *Enforcing a Monetary Order*
- How and when to have a decision or order corrected:  
Fact Sheet RTB-111: *Correction of a Decision or Order*
- How and when to have a decision or order clarified:  
Fact Sheet RTB-141: *Clarification of a Decision or Order*
- How and when to apply for the review of a decision:  
Fact Sheet RTB-100: *Review Consideration of a Decision or Order* **(Please Note: Legislated deadlines apply)**

To personally speak with Residential Tenancy Branch (RTB) staff or listen to our 24 Hour Recorded Information Line, please call:

- Toll-free: 1-800-665-8779
- Lower Mainland: 604-660-1020
- Victoria: 250-387-1602

Contact any Service BC Centre or visit the RTB office nearest you. For current information on locations and office hours, visit the RTB web site at [www.rto.gov.bc.ca](http://www.rto.gov.bc.ca)