



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Holdfast Consultants Inc.  
and [tenant name suppressed to protect privacy]

## **DECISION**

### **Dispute Codes:**

Tenant's application (filed February 20, 2013, amended April 25, 2013): MNDC; MNSD

Landlord's application (filed March 24, 2013): MNR; MNDC

### **Introduction**

This Hearing was originally convened on May 16, 2013, to consider cross applications. The matter was adjourned to August 8, 2013. An Interim Decision was provided to the parties on May 24, 2013, which should be read in conjunction with this Decision.

The Hearing reconvened on August 8, 2013. The matter was adjourned to September 17, 2013. An Interim Decision was provided to the parties on August 9, 2013, which should be read in conjunction with this Decision.

The Tenant seeks return of her security deposit and compensation for damage or loss under the Act, regulation or tenancy agreement. The Landlord seeks a monetary award for unpaid rent and compensation for damage or loss under the Act, regulation or tenancy agreement.

The Tenant amended her Application on April 25, 2013, to increase the amount of compensation claimed.

The parties gave affirmed testimony at the Hearings.

### **Preliminary Matter**

The Landlord is a company and BM is the Landlord's agent. Therefore the Tenant's application was amended to reflect the correct name of the Respondent.

### **Issues to be Decided**

1. Is the Tenant entitled to double the amount of the security deposit pursuant to the provisions of Section 38 of the Act?

2. Is the Tenant entitled to compensation for a reduction in the value of the tenancy due to the Landlord's breach of the Act, pursuant to the provisions of Section 67 of the Act?
3. Is the Tenant entitled to compensation for moving costs, pursuant to the provisions of Section 67 of the Act?
4. Is the Landlord entitled to compensation for loss of revenue due to the Tenant's breach of the tenancy agreement and the Act, pursuant to the provisions of Section 67 of the Act?
5. Is the Landlord entitled to compensation for the cost of cleaning the rental unit?
6. Is the Landlord entitled to compensation for the cost of advertising the rental unit as a result of the Tenant's breach of the Act and the tenancy agreement?

### **Background and Evidence**

This tenancy began on September 1, 2012. It was a fixed term lease, set to end on August 31, 2013. At the end of the term, the tenancy could continue on a month-to-month basis or for another fixed length of time. Monthly rent was \$900.00, due on the 1<sup>st</sup> day of each month. The Tenant paid a security deposit in the amount of \$450.00 and a pet damage deposit in the amount of \$350.00 at the beginning of the tenancy.

On September 28, 2012, the Tenant gave the Landlord written notice that she was ending the tenancy "before the end of November". A copy of the notice was provided in evidence. The Tenant paid rent for the month of November, 2012, and moved out on November 29, 2012. The Landlord advertised the rental unit for rent and was able to secure a new tenant for January 1, 2013, for \$900.00 per month.

### **The Tenant gave the following testimony:**

The Tenant testified that the refrigerator was not keeping a cold enough temperature and that she had to throw away groceries because they were spoiling and had to eat most of her meals out. She stated that she advised the Landlord's agent BM, but the refrigerator was not fixed for 5 weeks. The Tenant seeks a 20% rent reduction for this portion of her claim.

The Tenant stated that there were other deficiencies in the rental unit; for example, the rental unit was not clean, the privacy curtains would not close properly, the sink was clogged and the towel rack fell off the wall. The Tenant testified that the Landlord took a pet damage deposit and allowed her to have a cat, but the strata corporation informed her that pets were not allowed in the building and that she would have to get rid of it.

The Tenant testified that on December 5, 2012, the Landlord returned only a portion of her security and pet damage deposit. She stated that the Landlord withheld \$409.24 without her consent and provided her with an invoice for the cost of a shelving unit, tool box and garden hose. The Tenant stated that the tool box and the hose were on the balcony and she threw them away because they were junk. She stated that the Landlord gave her the shelving unit, which she used to store her paints. She stated that she purchased a carpet and a chair from the Landlord and does not need the shelving unit. The Tenant stated that the Landlord welcome to have the shelving unit back. The Tenant seeks compensation in the equivalent of double the amount of the unreturned portion of the deposits.

The Tenant testified that the Landlord did not provide her with storage, which was part of the tenancy agreement. She stated that she was charged \$25.00 for storage and therefore, she seeks a refund of \$25.00 a month for the three month tenancy.

The Tenant stated that it cost a lot of money to move because of the Landlord's breach of the tenancy agreement. She seeks to recover her moving costs. The Tenant provided a copy of the receipt for her moving expenses in evidence.

The Tenant's monetary claim is as follows:

Compensation for unreturned portion of deposits (\$409.24 x 2)	\$818.48
Compensation for rent paid November, 2012	\$900.00
Rent reduction for 5 weeks with no working fridge	\$225.00
Moving costs	\$1,112.72
Compensation for no storage	<u>\$75.00</u>
TOTAL CLAIM	\$3,131.20

The Tenant's witness PA gave the following affirmed testimony:

PA testified that she was with the Tenant during the move-out inspection. She stated that there was a walk-through, but no paper work was completed. PA testified that the Tenant gave the Landlord her forwarding address on November 30, 2013.

The Tenant's witness BJ gave the following affirmed testimony:

BJ testified that shortly after the Tenant moved in she said the fridge was not working properly. BJ went to the rental unit and confirmed that the fridge was not cold enough, the oven/stove was filthy and the windows were dirty. The Tenant could not use her fridge for 5 or 6 weeks.

The Landlord's agent BM gave the following testimony:

BM testified that the Tenant stole the entertainment centre, deck box and hose. He stated that the Landlord had left the items for the Tenant's use during the tenancy and that they were not given to the Tenant. BM testified that he applied the deposits to the "stolen property". The Landlord does not want the entertainment centre back.

BM acknowledged that he received the Tenant's forwarding address on November 30, 2012 and stated that he returned the balance of the deposits within the legislated 15 days.

BM testified that there were two tenancy agreements drawn up. He stated that after signing the first tenancy agreement, the Tenant asked about storage and he told her she could have storage for a price. The second agreement was drawn and included a clause that storage was available for the cost of \$25.00 per month. He stated that he gave her the only keys to the storage unit after she signed the second agreement.

BM testified that the Tenant told him she had a cat after she signed the agreement and that the Tenant gave her notice to end the tenancy 6 to 8 days before the strata wrote the letter about the cat. He stated that he agreed to let her have a cat because he knew other occupants in the building had cats. He stated that he warned her she must keep the cat a secret, but he received reports that the Tenant was seen walking the halls with her cat.

BM testified that he always attended to the Tenant's many complaints about deficiencies in a timely manner. He testified that the Tenant first complained about the fridge on September 21, 2012, and that he purchased a thermometer and placed it in the fridge. It was reading 5 degrees. BM submitted that a normal temperature is between 4 and 6 degrees. The Tenant was still not satisfied and therefore on September 24th, he made an appointment with a repairman to look at the fridge on September 26, 2012. He stated that the Tenant did not answer the repairman's call to confirm the appointment, so it was rescheduled for October 9, 2013. BM stated that the repairman said the fridge was working but there might be a problem with the thermostat. BM stated that he paid to have a new thermostat installed.

The Landlord seeks to recover the cost of advertising the rental unit; the cost of replacing the entertainment centre, hose and deck box; the cost of new tenants' "move-in fee"; loss of revenue for the month of December, 2012; the cost of cleaning the rental unit, repairs to the floor and painting supplies; the cost of notarizing a letter; and the

cost of serving the Tenant with documents. The Landlord provided invoices, statements and other documentary evidence in support of its claim.

The Landlord's monetary claim is as follows:

Compensation for entertainment centre (reduced from \$899.00 because of age of unit)	\$250.00
Cost to replace hose	\$22.39
Cost to replace deck box	\$133.28
Cost of advertising rental unit	\$349.44
Cost of new tenants' move in fee	\$50.00
Loss of revenue for December, 2012	\$900.00
Cost of notarized letter	\$40.00
Cost of serving the Tenant (registered mail)	\$23.26
Cost of cleaning, repairs and supplies	<u>\$220.05</u>
TOTAL CLAIM	\$1,988.42

### **Analysis**

Both parties have made claims for damage or loss and **it is the responsibility of the claimant in each application to provide sufficient evidence to prove their claim** on the civil standard, the balance of probabilities.

Section 67 of the Act states that if damage or loss results from a party not complying with the Act, regulations or tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

### **Regarding the Tenant's Application:**

#### *Compensation for Unreturned Portion of Deposits*

The security deposit and pet damage deposit are held in a form of trust by the Landlord for the Tenant, to be applied in accordance with the provisions of the Act.

Section 38(1) of the Act provides that (unless a landlord has the tenant's **written consent** to retain a portion of the security or pet damage deposit) at the end of the tenancy and after receipt of a tenant's forwarding address in writing, a landlord has **15 days** to either:

1. **repay the deposits** in full, together with any accrued interest; **or**
2. **make an application** for dispute resolution claiming against the deposits.

(my emphasis added)

In other words, a landlord may not keep a security or pet damage deposit without the tenant's written permission or an Order of the Director allowing the landlord to apply the security deposit or pet damage deposit towards damages or unpaid rent.

In this case, the Landlord did not obtain an Order of the Director that they could keep any of the deposits. However, I find that the Landlord returned a portion of the deposits, \$390.76, within the required time limit.

Section 38(6) of the Act provides that if a landlord does not comply with Section 38(1) of the Act, the landlord **must** pay the tenant double the amount of the deposits that were held contrary to the Act. Therefore, I find that the Tenant is entitled to a monetary order for double the amount of the deposits that the Landlord held, pursuant to the provisions of Section 38(6) of the Act, in the amount of **\$818.48** (\$409.24 x 2). No interest has accrued on the deposits.

#### *Compensation for rent paid November, 2012*

The Tenant had possession of the rental unit for the month of November, 2012, and I find that she did not provide sufficient evidence to support this portion of her claim.

#### *Rent Reduction for no working fridge for 5 weeks*

The parties disagreed with respect to when the Tenant first advised the Landlord about the fridge. The Tenant did not put her complaint in writing until September 28, 2012; however, BM acknowledged first hearing about it on September 21, 2012. BM also stated that the fridge was repaired on October 9, 2012. I find that the Tenant provided insufficient evidence that she was without a working fridge for 5 weeks; however, I allow this portion of her claim for the period of September 22 to October 9, 2012, (18 days x 900/30) x 20% = **\$108.00**.

#### *Moving Costs*

Section 7(1) of the Act states that if a landlord or tenant does not comply with the Act, regulations or tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results from the breach. BM required and received a pet damage deposit knowing that the strata bylaws did not allow pets in the building. Therefore, I find that the Landlord breached a fundamental term of the tenancy agreement and that the Tenant is entitled to recover her documented moving costs in the amount of **\$1,112.72** from the Landlord.

### *Compensation for No Storage*

I find that the Tenant did not provide sufficient evidence to prove this portion of her claim. The tenancy agreement that the Tenant provided in evidence has storage ticked off as being included in the tenancy agreement, with no additional fee. However, the Tenant provided no evidence that she used alternative storage facilities at \$25.00 a month. Therefore, I find that the Tenant incurred no loss.

The Tenant has established a monetary award, calculated as follows:

Compensation for unreturned deposits	\$818.48
Rent reduction for 18 days	\$108.00
Moving expenses	<u>\$1,112.72</u>
TOTAL	<b>\$2,039.20</b>

### Regarding the Landlord's Application:

Section 7(2) of the Act requires the party claiming compensation to do whatever is reasonable to minimize the damage or loss.

To prove a loss and have the Tenant pay for the loss requires the Landlord to satisfy four different elements:

1. Proof that the **damage or loss exists**,
2. Proof that the damage or loss occurred **due to the actions or neglect of the Tenant in violation of the Act**,
3. Proof of the **actual amount required to compensate** for the claimed loss or to repair the damage, and
4. Proof that the Landlord followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

I have found that the Landlord entered into a tenancy agreement with the Tenant knowing that the strata bylaws did not allow pets in the rental premises and that the Landlord breached a fundamental term of the tenancy agreement. I find that any damage or loss that was incurred by the Landlord was due to its actions and therefore, the Landlord's claims for advertising the rental unit, the cost of the new tenants' move in fee and loss of revenue for December, 2012, are dismissed.

There is no provision in the Act for recovery of service costs or the costs of compiling evidence. Therefore, this portion of the Landlord's claim is also dismissed.

I dismiss the Landlord's claims with respect to compensation for the cost of replacing the entertainment centre, hose and deck box. I find that the Landlord did not provide sufficient evidence to support this portion of its claim, for the following reasons:

- The Landlord submitted that the items were left for the Tenant's use during the tenancy and were not to be removed by the Tenant, but they were not included in paragraph 3(b) on the tenancy agreement.
- There is no addendum to the move-in Condition Inspection Report which includes these items.

I find that the Landlord provided insufficient evidence to support its claim for cleaning, repairs and supplies; for example, a completed end-of-tenancy Condition Inspection Report. This portion of their claim is dismissed.

### **Conclusion**

I hereby provide the Tenant with a Monetary Order in the amount of **\$2,039.20** for service upon the Landlord. This Order may be filed in the Provincial Court of British Columbia (Small Claims) 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: September 30, 2013

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Residential Tenancy Branch



