



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Dispute Codes:**

MNDC, FF

### **Introduction**

This hearing was convened to deal with an Application for Dispute Resolution filed by the tenant seeking monetary compensation. The tenant is claiming a refund of \$375.00 reimbursement of rent for rent collected by the landlord for the month of December 2013 after the tenant had already vacated the rental unit. The tenant is also claiming an additional \$100.00 in damages.

Both parties were present at this hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained. The participants had an opportunity to submit documentary evidence prior to this hearing, and the evidence has been reviewed. The parties were also permitted to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the affirmed testimony and relevant evidence that was properly served.

### **Preliminary Matter**

The tenant requested an opportunity to provide a current address for service to the tenant in confidence. This request was denied as I considered that this would be unfairly prejudicial and contrary to natural justice for the Arbitrator allow one participant of the hearing to give testimony in the absence of both parties.

However, the tenant confirmed that the address provided on the Application for Dispute Resolution will be considered as the tenant's service address.

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

Is the tenant entitled to a refund for rent paid for a future month?

Is the tenant entitled to monetary compensation under section 67 of the Act for damages or loss?

### **Background and Evidence**

The tenancy began on a date that was not specified. The rent was \$375.00 and no security deposit was paid.

The tenant testified that his rent was paid by social services directly to the landlord. According to the tenant, he vacated the rental unit during the last week of November 2013. The tenant testified that, in a communication dated November 22, 2013, he provided the landlord with written Notice that he had vacated the unit as of November 18, 2013. The tenant testified that the landlord had already been given a cheque for \$375.00 payment of the tenant's rent for the month of December 2013 but the landlord refused to refund this December payment to the tenant.

The landlord acknowledged receiving this short Notice. The landlord pointed out that the Act requires a tenant to give one-month written Notice and the landlord was not able to re-rent the unit for the month of December due to the short Notice. The landlord stated that the tenant's rent for December 2013 was already paid on the tenant's behalf directly by social services near the end of November. The landlord stated that the rent was retained despite the fact that the tenant had moved out before December 1, 2013.

The landlord stated that the reason for this is the fact that the landlord is entitled to compensation, given that the tenant did not provide one-month Notice as required under the Act and the fact that the rental unit was not clean. The landlord acknowledged that no application for dispute resolution was made seeking damages against the tenant as the funds paid for December were merely kept.

The landlord believes that the tenant's claim for the return of December rent has no merit and should be dismissed.

The tenant is also claiming compensation of \$100.00 for "*transportation, inconvenience & shelter costs*".

The landlord does not agree with this portion of the tenant's application either.

### **Analysis**

Section 26 of the Act states that rent must be paid when it is due, under the tenancy agreement, whether or not the landlord complies with the Act, the Regulations or the tenancy agreement.

I find that the tenant's rent for December 2013 was not due and payable until December 1, 2013. I find that prior to December 1, 2013, the tenant had already abandoned the rental unit and was no longer a tenant. I further find that the landlord was notified prior to December 1, 2013, that the tenant no longer resided in the rental unit.

For this reason, I find that the landlord was not permitted under the Act to collect any rent from the tenant for December 2013, because the tenant's rent for December would not be due until December 1, 2013 and by that time he had left. I find that the fact the landlord already physically received the future rent cheque does not entitle the landlord to automatically keep these funds and justify the landlord's refusal to release them.

In the case before me, I find that the tenancy had already been terminated.

According to Residential Regulation, Paragraph 5(4) of the Schedule, a landlord is required to return all post-dated cheques to the tenant on the final day that the tenant is in possession of the rental unit or sent to the forwarding address left by the tenant.

Based on the above, I find that a landlord is not authorized under the Act to retain and cash any post-dated cheques once either party has terminated the agreement. This would also apply to funds paid in advance of the month for which they are allocated.

I find that the landlord's position that they are owed compensation for the tenant's violation of section 45 of the Act, due to inadequate Notice to vacate, is not a matter to be determined under this application.

Although I have found that the landlord is not entitled to collect or retain **rent** payments for a period during which the tenant was no longer residing in a suite, I make no findings on the issue of damages to which the respondent landlord may or may not be entitled for short notice to vacate or any other issue. The landlord is at liberty to make their own application.

I find that the landlord has not made a cross application to claim damages against the tenant under section 67 of the Act. No application from the landlord is before me today.

Therefore, I must clarify that this hearing is only to deal with the tenant's application and claims regarding the payment of *rent* and other damages.

Accordingly, I find that the landlord must refund the \$375.00 rent paid for December 2013 back to the tenant.

In regard to the tenant's claim for \$100.00 in damages for "*transportation, inconvenience & shelter costs*", I find that section 7 of the Act states that if a party fails to comply with the Act, or tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

Section 67 of the Act grants a Dispute Resolution Officer authority to determine the amount and to order payment under such circumstances. I find that in order to justify payment of damages under section 67, the Applicant has a burden of proof to establish

that the other party did not comply with the agreement or Act and that this non-compliance resulted in costs or losses to the Applicant, pursuant to section 7.

I find that the tenant's allegation that the landlord violated the Act and agreement resulting in the tenant being forced to vacate the rental unit and incurring a loss, is not supported by sufficient evidence proving that the landlord contravened the Act. Therefore, I find that the tenant is not entitled to the monetary claim for \$100.00 in damages and this portion of the application must be dismissed.

Based on the evidence before me, I hereby grant the tenant a monetary order for \$375.00. This order must be served on the landlord and may be enforced through BC Small Claims Court if necessary.

The tenant's request for reimbursement for the cost of the application is denied as the tenant did not pay an application fee.

The remainder of the tenant's application is dismissed without leave to reapply.

### **Conclusion**

The tenant is partially successful in the application and is granted a monetary order for rent collected by the landlord for a period after the tenant vacated.

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 20, 2014

---

Residential Tenancy Branch

