



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding UVHS-Urban Vision Housing Society  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNSD, MNR, MNDC, FF

### Introduction

This hearing was convened as a result the landlord's application for dispute resolution under the Residential Tenancy Act (the "Act"). The landlord applied for a monetary order for money owed or compensation for damage or loss and unpaid rent, for authority to retain the tenant's security deposit, and for recovery of the filing fee.

The landlord's agent (hereafter "landlord") and the tenant's advocate were present, the hearing process was explained and they were given an opportunity to ask questions about the hearing process. Approximately 33 minutes into the hearing, the tenant dialed into the telephone conference call hearing.

The evidence was discussed and no party raised any issue regarding service of the evidence.

Thereafter all parties were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, respond each to the other, and make submissions to me.

I have reviewed all oral and documentary evidence before me that met the requirements of the Dispute Resolution Rules of Procedure (Rules); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

### Issue(s) to be Decided

Is the landlord entitled to retain the tenant's security deposit, further monetary compensation, and to recover the filing fee?

### Background and Evidence

The landlord provided undisputed evidence that this tenancy began approximately 5 years ago and that the tenant paid a security deposit of \$187.50. The tenancy ended on January 21, 2014. There is no written tenancy agreement or move-in or move-out condition inspection report.

The rental unit is a single room occupancy in a hotel type residential property.

The landlord's monetary claim is as follows:

Outstanding rent, \$18.44 for 48 months	\$885.12
Remove and discard belongings	\$300
Dumpster charges	\$220
Sanitation of room	\$100
<b>TOTAL</b>	<b>\$1505.12</b>

The landlord's relevant documentary evidence included, but was not limited to, an invoice from a disposal company, a statutory declaration from the tenant, apparently used as tenant's evidence in another dispute resolution hearing, and photos of the rental unit.

The parties were previously in dispute resolution on the tenant's application for an order requiring the landlord to comply with the Act and monetary compensation, which resulted in a Decision in favour of the tenant, as the tenant was granted a monetary order in the amount of \$2530. The Decision of another Arbitrator, # 817067, dated May 7, 2014, is relevant in this case as that Arbitrator decided upon issues directly related to the landlord's application here. In part, the other Arbitrator found that the landlord illegally ended the tenancy on January 21, 2014, when they refused the tenant access to the rental unit and evicted him without an order of possession for the rental unit. The other Arbitrator also found that the landlord allowed the tenant an opportunity to remove his belongings, but due to the illegal eviction, the tenant was suddenly homeless and had no place to store his belongings. The landlord was required then to store the tenant's belongings, and instead, disposed of such belongings without an accounting, according the other Arbitrator's Decision of May 7, 2014.

The landlord confirmed that they have not paid the tenant the amount of the monetary award.

As to the present application, the landlord's relevant oral evidence included:

*Rent deficiency*-The landlord stated the tenant's monthly rent obligation was \$375, as mentioned in the tenant's statutory declaration, which was paid by a government Ministry, and at some point, the Ministry reduced the rent to \$356.56. According to the landlord, the tenant was then required to make up the monthly shortfall of \$18.44, for the last 48 months.

In response to my question, the landlord confirmed that she was not sure of the exact date when the rent was reduced.

The tenant's advocate stated that the tenant disagreed that rent was \$375 and that as his rent was paid directly to the landlord by the Ministry, the tenant had no way of ever knowing that the rent was not satisfactory or deficient. The advocate further submitted that the landlord never mentioned to the tenant that the rent amount received was not satisfactory and that the landlord should be estopped from making such claim as they continually accepted this amount without notice to the tenant the amount was deficient.

The advocate further pointed out that the tenant did not have access to his evidence as he was illegally evicted by the landlord.

*Remove and discard belongings*-The landlord submitted that the tenant removed all the belongings he wanted, turned in the key, and left the rest of his personal property. As the landlord was then required to dispose of the personal property, they hired 2 men at the rate of \$15 per hour for 20 hours, according to the landlord.

The landlord confirmed that she was not the witness to the tenant turning in his key or making the statement that he would not be retrieving any further belongings.

The landlord confirmed further that they provided no proof that they paid this amount.

In response, the tenant's advocate stated that the problem with the landlord's claim was that the tenant was illegally evicted, as found by the other Arbitrator, and that he did not have access to his belongings or a place to store them as he was suddenly homeless.

*Dumpster charges*-The landlord stated that the amount of personal property left by the tenant required 4 trips to the landfill for disposal, and in support, they provided a receipt for \$527.89, which included 5 pick-ups of \$55 each and a monthly disposal charge of \$172.75.

The landlord also referred to the photographic evidence.

In response, the tenant's advocate stated that the evidence of the landlord was unclear as to whether any of the charges were attributable to the rental unit of this tenant.

*Sanitation of room*-The landlord submitted that the rental unit required cleaning after this tenancy ended, and confirmed that the cleaning would be carried out for the next tenant as a matter of course.

### Analysis

Under section 7(1) of the Act, if a landlord or tenant does not comply with the Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other party for damage or loss that occurs as a result, so long as the applicant verifies the loss, as required under section 67. Section 7(2) also requires that the claiming party do whatever is reasonable to minimize their loss.

*Rent deficiency*-I find the landlord submitted insufficient evidence that the rent owed by this tenant was \$375, due to the lack of a written tenancy agreement or any other evidence showing payments, as would be shown through a tenant ledger sheet, accounting records, or information from the paying Ministry. Further the landlord provided no evidence of when the alleged reduced payments began.

As the landlord failed to address an alleged rent deficiency with the tenant for a claimed 48 months, I also find that the landlord failed to prove that they took reasonable steps to minimize their loss.

Due to the above, I find the landlord submitted insufficient evidence to support this claim and I dismiss their claim for \$885.12, without leave to reapply.

*Remove and discard belongings*-Due to the Decision of May 7, 2014, of another Arbitrator, which found that the landlord threw the tenant's unspecified items in the garbage without authority, I find the landlord cannot support this claim, as the items shown in the landlord's photographic evidence could very well be the items disposed of by the landlord without authority.

As another Arbitrator found that the tenant was suddenly homeless due to the illegal eviction of the tenant, with no place to store his belongings, I also find that landlord is not entitled to be enriched from their breach of the Act.

The landlord additionally failed to provide proof of payment or of a loss

Due to the above, I dismiss the landlord's claim of \$300, without leave to reapply.

*Dumpster charges*- I could not rely upon the landlord's evidence from the disposal company, as there were unspecified charges, not specifically designated for this rental unit, and as the residential property was a multi-unit hotel type accommodation, it is just as likely as not that the disposal of items could be for other rental units.

For these reasons and for the reasons stated in the claim to remove and discard belongings, I dismiss the landlord's claim for \$220, without leave to reapply.

*Sanitation of room*-Due to the findings of the other Arbitrator that the tenant was illegally denied access to his rental unit, I find it would be impossible for the tenant to clean the rental unit at the end of the tenancy, as was his right to do so.

I therefore dismiss the landlord's claim for \$100.

For the reasons stated above, I dismiss the landlord's application in its entirety, including their request to recover the filing fee paid for this application, without leave to reapply.

As I have dismissed the landlord's application claiming against the tenant's security deposit, I direct the landlord to return the tenant's security deposit of \$187.50 forthwith.

I grant the tenant a final, legally binding monetary order pursuant to section 67 of the Act for the amount of \$187.50, which is enclosed with the tenant's Decision.

Should the landlord fail to pay the tenant this amount without delay, the order may be served upon the landlord and filed in the Provincial Court of British Columbia (Small

Claims) for enforcement as an Order of that Court. The landlord is advised that costs of such enforcement are recoverable from the landlord.

Conclusion

The landlord's application is dismissed, without leave to reapply.

The landlord is directed to return the tenant's security deposit of \$187.50 and the tenant is granted a monetary order in that amount.

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* and is being mailed to both the applicant and the respondent.

Dated: September 4, 2014

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Residential Tenancy Branch

