



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Dispute Codes**

OPL, MND, MNSD, FF

### **Introduction**

This hearing was convened in response to an un-amended application by the landlord for an Order of Possession for Landlord's Use of Property and a Monetary Order for damage to the rental unit and to retain the deposit(s) of the tenancy as applicable, and recover the filing fee. The application was verbally amended by the landlord to exclude the request for an Order of Possession as the landlord had by *de facto* regained possession of the unit as the tenant vacated. As a result, solely the monetary claim remained.

Both parties attended the conference call hearing. The landlord submitted all the evidence upon which they intend to rely later than prescribed and required by the Rules of Procedure – received by the Branch September 11, 2014 and received by the tenant 2 days before the hearing on September 15, 2014: the landlord acknowledging they sent the tenant their evidence the day before.

### **Analysis**

The Rules of Procedure prescribe that all of the applicant's evidence must be received by the respondent and the Branch no later than 14 days before the hearing, and the respondent's evidence no later than 7 days before the hearing to allow the respondent opportunity to review and respond to the landlord's evidence. The landlord provided a narrative with reasons for why they did not serve or submit their evidence within the required time. I find that to ensure a fair and efficient process the exchange of evidence must be in concert with the Rules respecting it. In this matter I further find the Rules of Procedure additionally require that all evidence must be served and submitted as soon as reasonably possible. On review of the landlord's submission I find the landlord unreasonably delayed the service of evidence, and I declined to consider it. As

the landlord intended to rely on the inadmissible evidence to advance their claim I **dismiss** the landlord's claim, with leave to reapply.

Residential Tenancy Policy Guideline #17, in part, states as follows:

## **17 RETURN OR RETENTION OF SECURITY DEPOSIT THROUGH ARBITRATION**

The Arbitrator will order the return of a security deposit, or any balance remaining on the deposit, less any deductions permitted under the Act, on:

- a landlord's application to retain all or part of the security deposit, or
- a tenant's application for the return of the deposit

unless the tenant's right to the return of the deposit has been extinguished under the Act. The Arbitrator will order the return of the deposit or balance of the deposit, as applicable, whether or not the tenant has applied for arbitration for its return.

In this application the landlord requested the retention of the deposits of the tenancy in satisfaction of their monetary claim. Because the claim has been dismissed it is appropriate that I Order the return of the tenant's deposits. I so Order and I grant the tenant a Monetary Order in the sum amount of the deposit: **\$1850.00**. If necessary, this Order may be registered in the Small Claims Court and enforced as an Order of that Court.

It must be noted that it is available to a party to obtain assistance in respect to a dispute, personally or via [www.gov.bc.ca/landlordtenant](http://www.gov.bc.ca/landlordtenant).

### **Conclusion**

The landlord's claim **is dismissed**, with leave to reapply.

I **grant** the tenant an Order under Section 67 of the Act for the amount of **\$1850.00**. 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 17, 2014

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Residential Tenancy Branch

