



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### Dispute Codes:

MNDC, MNSD, O, FF

### Introduction

This hearing was convened in response to the Landlord's Application for Dispute Resolution, in which the Landlord applied for a monetary Order for money owed or compensation for damage or loss; to keep all or part of the security deposit; to recover the fee for filing this Application for Dispute Resolution; and for "other".

The Landlord stated that on September 05, 2014 the Application for Dispute Resolution, the Notice of Hearing, and evidence the Landlord wishes to rely upon as evidence were sent to the Tenant, via registered mail, at the rental unit. The Landlord submitted a Canada Post receipt that corroborates this statement.

The Landlord stated that on February 10, 2015 an amended Application for Dispute Resolution was sent to the Tenant, via registered mail, at a forwarding address provided by the Tenant. The Landlord submitted a Canada Post receipt that corroborates this statement.

In the absence of evidence to the contrary, I find that all of these documents have been served in accordance with section 89 of the *Residential Tenancy Act (Act)*; however the Tenant did not appear at the hearing.

### Issue(s) to be Decided

Is the Landlord entitled to retain a part of the security deposit in compensation for moving costs paid to the Tenant?

### Background and Evidence

The Landlord stated that this tenancy began on September 01, 2013 and ended on January 31, 2015. He stated that at the start of this tenancy the rent was \$1,425.00 and at the end of the tenancy the rent was \$1,455.00.

The Landlord stated that the Tenant paid a security deposit and deposit fees of \$912.50. He stated that \$472.50 of the deposits was returned to the Tenant sometime in February of 2015 and that he still retains \$440.00 of the deposits.

The Landlord stated that in April of 2014 the rental unit sustained water damage and the resulting repairs required the rental unit to be vacant for a short period of time in June of 2014. He stated that the damage was the result of a plumbing problem which was not the fault of the Tenant.

The Landlord stated that he agreed to reduce the rent for June by \$475.00. He stated that \$150.00 of this rent reduction was for compensation for the cost of removing her personal belongings and the remainder was for the inconvenience of the repairs. He stated that on June 17, 2014 he gave the Tenant an additional \$240.00 for the expense of moving her personal property.

The Landlord stated that on June 23, 2014 a moving company moved property out of the rental unit. He stated that as a result of a dispute between the Tenant and the moving company, the Tenant's property was left outside the residential complex. He does not believe any money was paid to the moving company by the Tenant.

The Landlord stated that the Tenant was distraught on June 23, 2014 so the building manager agreed to allow her to store her property in his office for a few days. He stated that the building manager and the Tenant moved her property into the office.

The Landlord stated that because the Tenant was distraught he offered to pay to have the property moved back in the rental unit, although the Tenant did not ask him to do so. He stated that the property was moved back into the rental unit on June 26, 2014 and that he paid \$440.00 for the move.

The Landlord is seeking to recover the \$390.00 that he paid to the Tenant for the purposes of having her furniture moved, as he does not believe she used this money for that purpose.

### Analysis

On the basis of the undisputed evidence, I find that the Landlord reduced the rent for June by \$475.00 in compensation for the inconvenience of having to temporarily vacate the rental unit and for the cost of temporarily moving/storing her property.

On the basis of the undisputed evidence, I find that the Landlord paid the Tenant an additional \$240.00 which was to be used to pay for temporarily moving/storing her property.

On the basis of the undisputed evidence, I find that the Tenant's property was moved into the office of the residential complex by the building manager and the Tenant; that is

was stored there for three days; and that the Landlord paid \$440.00 to have the property moved back into the rental unit.

When making a claim for damages under a tenancy agreement or the *Residential Tenancy Act (Act)*, the party making the claim has the burden of proving their claim. Proving a claim in damages includes establishing that a damage or loss occurred; that the damage or loss was the result of a breach of the tenancy agreement or the *Act*; establishing the amount of the loss or damage; and establishing that the party claiming damages took reasonable steps to mitigate their loss.

While I accept that the Landlord suffered a loss of \$1,155.00 as a result of the Tenant being required to temporarily vacate the rental unit, I cannot conclude that this loss was the result of the Tenant breaching the *Act*. In reaching this conclusion I was heavily influenced by the undisputed evidence that the rental unit needed to be vacated to repair damage that was not the fault of the Tenant.

Section 67 of the *Act* authorizes me to order a tenant to pay compensation to a landlord only if the tenant has breached the *Act* or the tenancy agreement. As there is no evidence that the Landlord's loss was the result of the Tenant breaching the *Act* or the tenancy agreement, I must dismiss the Landlord's application for compensation.

I find that the Landlords application has been without merit and I dismiss the application to recover the fee for filing this Application for Dispute Resolution.

### Conclusion

As the Landlord has failed to establish that he has the right to retain any amount of the Tenant's security deposit, I find that he must return the remaining \$440.00 to the Tenant. Based on these determinations I grant the Tenant a monetary Order for the amount \$440.00. In the event that the Landlord does not comply with this Order, it may be served on the Landlord, filed with the Province of British Columbia Small Claims Court 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: March 25, 2015

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Residential Tenancy Branch

