



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Dispute Codes**

For the landlord: OPC, MNSD, MNDC, MNR, FF  
For the tenant: MNSD, MNDC, FF

### **Introduction and Preliminary matters-**

This was the second reconvened hearing dealing with the parties' respective applications for dispute resolution under the Residential Tenancy Act (the "Act").

The landlord applied for an order of possession for the rental unit due to alleged cause, for authority to keep all or part of the tenant's security deposit, a monetary order for money owed or compensation for damage or loss and unpaid rent, and for recovery of the filing fee paid for this application. The landlord no longer seeks an order of possession as the tenancy has ended.

The tenant applied for a monetary order for a return of his security deposit, a monetary order for money owed or compensation for damage or loss, and for recovery of the filing fee paid for this application.

This hearing originally began on January 8, 2015, was attended by the tenant's agent (hereafter "tenant") and the landlord, and dealt with the landlord's contention that he had not received the tenant's application and evidence. The hearing was then adjourned and reconvened on February 17, 2015. The landlord again said he had not received the tenant's application and evidence and the tenant submitted that he had served the landlord the application and evidence via registered mail and that the mail was returned to him as the landlord refused the mail. An Interim Decision was entered in the matter, is incorporated by reference, and may be read in conjunction with this Decision.

The hearing was again adjourned to deal with the evidence issues regarding the tenant's application and evidence, and was reconvened on March 26, 2015.

At this reconvened hearing, the landlord did not raise any issue with respect to the tenant's application and evidence, and the hearing proceeded in consideration of the parties' respective applications.

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 to the other's evidence, 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 monetary compensation from the tenant and to recovery of the filing fee paid for this application?

Is the tenant entitled to monetary compensation from the landlord?

Background and Evidence

I was not provided a written tenancy agreement.

The undisputed evidence of the parties was that this month-to-month tenancy started on August 1, 2014, ended on December 1, 2014, when the tenant vacated the rental unit, monthly rent was \$700.00, and the tenant paid a security deposit of \$350.00 at the start of the tenancy. The security deposit has not been returned to the tenant.

The rental unit is in the lower suite and the landlord resides in the upper suite.

*Landlord's application-*

The landlord's monetary claim listed in his application is \$1400.00, comprised of unpaid rent of \$700.00 for December 2014, and loss of rent revenue of \$700.00 for January 2015. It is noted that the landlord attempted through additional documentary evidence to add a dead bolt lock cost to his monetary claim by submitting the receipt; however, I have not accepted this claimed cost as the landlord failed to amend his application seeking additional costs.

The landlord did not provide any relevant documentary evidence; however, the tenant submitted a copy of a 1 Month Notice to End Tenancy for Cause (the "Notice"). The Notice was dated November 10, 2014, and listed an effective move-out date of January 1, 2015. The undisputed evidence of the landlord was that the Notice was served on the tenant by leaving it with the tenant on November 10, 2014.

The landlord submitted he was entitled to unpaid rent for December 2014, as the tenant vacated early, without sufficient notice, on December 1, 2014, without paying rent for December 2014. The landlord submitted further that he is also entitled to loss of rent revenue for January 2015.

In response to my question, the landlord confirmed that he did not make attempts to re-rent the rental unit after the tenant vacated, but contended the keys were not returned to him by the tenant. The landlord submitted further that he found the keys hanging in the rental unit on December 12, 2014.

*Tenant's response to the landlord's application-*

The tenant, through his agent, contended that the Notice itself said that the tenant could vacate earlier than the effective move-out date, which he chose to do.

*Tenant's application-*

The tenant's monetary claim is \$2169.64, as follows:

Security deposit	\$350.00
Financial hardship for December	\$350.00
Utilities, October & November	\$51.64
Loss of enjoyment for cable loss	\$406.00
Loss of enjoyment because of dogs	\$700.00
Agent's loss of wages	\$312.00

The tenant's relevant documentary evidence included a copy of the written notice to vacate, written summaries supporting their application, a written letter to the landlord from the tenant, a utility bill, dated October 20, 2014, and notices from the landlord to the tenant regarding potential inspections.

The tenant and landlord submitted the following in regard to the tenant's application:

*Security deposit-*

The tenant requested the return of the security deposit of \$350.00 as the landlord has failed to return it, despite providing a written forwarding address and leaving the rental unit in a clean condition.

*Financial hardship-*

The tenant, through his agent, submitted that as his father was on income assistance, he had to leave quickly as another rental unit became available by December 1, 2014.

The notice to vacate given to the landlord was in written form, on November 28, 2014, and contended that the Notice itself said that the tenant could earlier than the effective move-out date, which he chose to do.

The tenant submitted further that they called the landlord three different days in early December in order to return the keys and were unsuccessful as the landlord failed to return their call. As the landlord failed to return the tenant's security deposit, the tenant was required to pay another security deposit for his next rental unit, creating a financial hardship due to being on long term disability.

In response, the landlord submitted he was assured the tenant had plenty of assistance from his brother and ex-wife, and stated that the tenant was given ample time under the Notice to vacate; the tenant, however, chose to move out quickly prior to the move-out date.

*Utilities, October & November-*

The tenant submitted that all utilities, including cable vision, were included in the monthly rent. After having suffered 2 seizures, the landlord told the tenant to vacate the rental unit, according to the tenant, and the landlord disconnected the cable vision on October 2, 2014. The tenant requested that the landlord turn the cable vision back on, and did so only for a three day period until the tenant could arrange for his own service, according to the tenant.

In response, the landlord submitted cable was not provided in the monthly rent, and that he only promised, and provided, a television with a receiver.

*Loss of enjoyment for cable loss-*

The tenant submitted that he was without cable from October 2 to October 19, 2014, a total of 18 days. The tenant requested 58% of the monthly rent for those days as loss of enjoyment, as the cable vision was vital to the tenant's enjoyment of life, due to his medical condition.

In response, the landlord reiterated that cable was not included in the monthly rent.

*Loss of enjoyment because of dogs-*

The tenant submitted that when he moved in, he was assured by the landlord that his 2 large dogs were not very loud. The tenant submitted that the dogs are quiet when the landlord and his spouse were home at night, but extremely loud during the day when the landlord was away from home, leading to a loss of quiet enjoyment as the tenant is at home during the day. The tenant submitted further that he was unable to enjoy his hobbies of cooking, baking, and watching television, due to this noise.

The tenant's request is a return of 25% of the monthly rent for August, September, October and November 2014, for a total of \$700.00.

In response, the landlord submitted that his dogs did bark during the day, as they are placed in a kennel, but did not know that a problem existed, as he was informed the tenant worked during the day.

The landlord submitted further that the tenant always knew about the dogs and even played with them in the yard.

*Agent's loss of wages-*

The tenant submitted that due to his medical condition, his agent would be required to assist at the hearing, taking 8 hours off from his job and 4 hours in preparing for the hearing.

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 of their actions or neglect, 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.

***Landlord's application-***

As to the landlord's claim for unpaid rent for December 2014, under section 44(1)(a)(iii) of the Act, one way a tenancy ends is by a landlord issuing the tenant a notice end a tenancy for alleged cause. Unless the tenant disputes the Notice of the landlord, under section 47 of the Act, the tenancy ends on the effective date of the Notice.

In this case, as the tenant did not file an application to dispute the Notice, the tenancy was scheduled to end on January 1, 2015, pursuant to the landlord's Notice. Therefore the tenant was obligated to pay rent until the scheduled end of the tenancy, as the tenant did not provide one clear calendar month before the next rent payment was due, as required by section 45(1) of the Act.

I therefore find that the landlord is entitled to unpaid rent for December 2014, as the tenant vacated the rental unit on December 1, 2014, without paying rent. I therefore find the landlord is entitled to a monetary award of \$700.00.

As to the landlord's claim for loss of rent revenue of \$700.00 for January 2015, I find the landlord sought to end the tenancy by January 1, 2015, through his Notice issued to the tenant. As the landlord ended the tenancy himself, I find he is not entitled to loss of rent revenue for January 2015 and therefore dismiss his claim of \$700.00.

As the landlord was at least partially successful with his application, I award him recovery of his filing fee of \$50.00, pursuant to section 72 of the Act.

Due to the above, I find the landlord is entitled to a total monetary award of \$750.00, comprised of unpaid rent of \$700.00 for December 2014 and the filing fee of \$50.00.

### ***Tenant's application-***

#### ***Security deposit-***

Under section 38(1) of the Act, at the end of a tenancy a landlord is required to either return a tenant's security deposit or to file an application for dispute resolution to retain the security deposit within 15 days of the later of receiving the tenant's forwarding address in writing.

In this case, I find the landlord filed an application within 15 days of the tenant vacating the rental unit on December 1, 2014, when his application was filed on December 8, 2014.

As to the tenant's right to a return of his security deposit of \$350.00, I will address my findings at the end of this Decision.

#### ***Financial hardship-***

I find the tenant has not presented proof that the landlord violated the Act or tenancy agreement for not returning the tenant's security deposit, which was the basis of the tenant's claim. I find the landlord properly filed an application claiming against the security deposit and it was not upon the landlord for the tenant choosing to vacate the rental unit prior to the scheduled end date of the tenancy, in this case, January 1, 2015.

Although, as the tenant correctly pointed out, the Notice stated that a tenant may leave prior to the effective move-out date, the tenant is still obligated to comply with the Act until the tenancy ends, including providing the landlord with 1 calendar month's notice of vacating.

I therefore dismiss the tenant's claim for \$350.00 for financial hardship.

*Utilities, October & November-*

As I was not presented with a written tenancy agreement, I find the tenant submitted insufficient evidence to support that cable television was included with the monthly rent. I find the landlord's explanation that he provided a television with a receiver to be just as likely as not as the tenant's submission that he was entitled to cable television.

I therefore dismiss the tenant's claim for \$51.64 for his utility costs for cable.

*Loss of enjoyment for cable loss-*

I likewise dismiss the tenant's claim for loss of quiet enjoyment due to cable loss, as I find the tenant has not established that the landlord was obligated to provide a cable package to the tenant with the monthly rent.

I therefore dismiss the tenant's claim for \$406.00 for loss of In response to my question due to cable loss.

*Loss of enjoyment because of dogs-*

I find the tenant submitted insufficient evidence to show that he suffered a loss of quiet enjoyment or that the landlord violated the Act. I made this determination due to lack of proof of any written requests or complaints to the landlord during the time period for which he seeks monetary compensation, and therefore could not determine that the landlord was aware that the tenant had issues with the dogs and able to address the issue.

I therefore dismiss his claim for \$700.00.

*Agent's loss of wages-*

Landlords and tenants are only entitled to recover costs for damages or losses directly related to breaches of the Act or the tenancy agreement, pursuant to section 67 of the act. Costs incurred that relate to processing a claim for dispute resolution are limited to the cost of the filing fee under section 72 of the Act. I find that I do not have authority to award any other costs related to a dispute resolution proceeding or to grant an award for the tenant's agent's lost wages and I therefore dismiss the tenant's claim for \$312.00.

Due to the above, I dismiss the tenant's monetary claim in its entirety.

***Both applications-***

As I have granted the landlord a monetary award of \$750.00 and dismissed the tenant's monetary claim, I allow the landlord to retain the tenant's security deposit of \$350.00 in partial satisfaction of his monetary award.

I grant the landlord a final, legally binding monetary order pursuant to section 67 of the Act for the balance due in the amount of \$400.00, which is enclosed with the landlord's Decision.

Should the tenant fail to pay the landlord this amount without delay after being served the order, the monetary order may be filed in the Provincial Court of British Columbia (Small Claims) for

enforcement as an Order of that Court. The tenant is advised that costs of such enforcement are recoverable from the tenant.

Conclusion

The landlord's application for monetary compensation is granted in part as he was granted a monetary award of \$750.00.

The tenant's application for monetary compensation was dismissed.

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: April 8, 2015

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Residential Tenancy Branch

