



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes

MNDC FF

### Introduction

This hearing dealt with an Application for Dispute Resolution filed by the Tenant on November 17, 2014 seeking to obtain a Monetary Order for: money owed or compensation for damage or loss under the Act, regulation, or tenancy agreement; and to recover the cost of the filing fee from the Landlord for this application.

The hearing was conducted via teleconference and was attended by the Landlord and the Tenant. Each person gave affirmed testimony. I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each party was provided an opportunity to ask questions about the process however, each declined and acknowledged that they understood how the conference would proceed.

The hearing package contains instructions on evidence and the deadlines to submit evidence, as does the Notice of Hearing provided to the Tenants which states:

- 1. Evidence to support your position is important and must be given to the other party and to the Residential Tenancy Branch before the hearing. Instructions for evidence processing are included in this package. Deadlines are critical.*

Rule of Procedure 3.14 provides that documentary and digital evidence that is intended to be relied on at the hearing must be received by the respondent and the RTB not less than 14 days before the hearing.

The Rules of Procedure # 3.15 provide that to ensure fairness and to the extent possible, the respondent's evidence must be organized, clear and legible. The respondent must ensure documents and digital evidence that are intended to be relied on at the hearing, are served on the applicant and submitted to the Residential Tenancy Branch as soon as possible. *In all events*, the respondent's evidence must be received by the applicant and the Residential Tenancy Branch not less than 7 days before the hearing.

Rule of Procedure 3.17 states that the Arbitrator has the discretion to determine whether to accept documentary evidence that does not meet the requirements set out in the Rules of Procedure.

The Landlord testified that she did not receive documentary evidence from the Tenant. The Tenant confirmed that he had not served his evidence upon the Landlord. To consider documentary evidence that had not been served upon the other party would constitute a breach of the principals of natural justice. Therefore, as the Landlord has not been served with the

Tenant's documentary evidence, I will not be considering that evidence in my Decision, in accordance with Rule of Procedure 3.17. I did however consider all of the Tenant's oral submission.

The Tenant acknowledged receipt of some of the documents the Landlord had submitted into evidence with the Residential Tenancy Branch (RTB). The Landlord confirmed that she did not serve the Tenant with copies of her photographs or with a copy of her cancelled cheque. Therefore, I did not consider the photographs or the cancelled cheque in my Decision. I did consider the Landlord's oral submissions and the remaining relevant written submissions and the "Application for Rent of Suite" document, pursuant to Rule of Procedure 3.17.

During the hearing each party was given the opportunity to provide their evidence orally, respond to each other's testimony, and to provide closing remarks. Following is a summary of the submissions and includes only that which is relevant to the matters before me.

#### Issue(s) to be Decided

Has the Tenant proven entitlement to monetary compensation for damage or loss under the Act, regulation, or tenancy agreement?

#### Background and Evidence

It was undisputed that the Tenant signed an Application for Rent of Suite document. No written tenancy agreement was entered into; however, both parties confirmed that the Tenant began occupying the self-contained suite on April 21, 2014. Payment of \$675.00 plus \$25.00 for utilities for the total monthly rent of \$700.00 was due on or before the 15<sup>th</sup> of each month. No security deposit was required to be paid.

The Tenant testified that paid the Landlord first and last month's rent of \$1,400.00 (2 x \$700.00) as per the Application for Rent of Suite document. The Tenant submitted that he vacated the rental property on August 1, 2014, at the request of the Landlord. He argued he had paid the full rent for July 15, 2014 to August 14, 2014; therefore, the Landlord is required to return the last month's rent he had prepaid at the start of the tenancy.

The Landlord testified and confirmed that the Tenant had paid her first and last month's rent. She argued that she did not request him to pay the last month's rent in advance, nor did she request that he move out on August 11, 2014. The Landlord confirmed that she is still in possession of the prepaid last month's rent of \$700.00 and stated that given the circumstances, she was happy that the Tenant moved out.

In closing, the Tenant argued that he should also be entitled to interest on his last month's rent, as well as the filing fee of \$50.00.

#### Analysis

After careful consideration of the foregoing, documentary evidence, and on a balance of probabilities I find as follows:

The *Residential Tenancy Act* defines a “**tenancy agreement**” as an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a rental unit, use of common areas and services and facilities, and includes a licence to occupy a rental unit.

Section 91 of the Act stipulates that except as modified or varied under this Act, the common law respecting landlords and tenants applies in British Columbia. Common law has established that oral contracts and/or agreements are enforceable.

I do not accept that the Application for Rent of Suite meets the requirements of the Act. Therefore, based on the above, I find that these parties entered into a verbal tenancy agreement and the undisputed terms of that verbal tenancy agreement, as listed above, are recognized and enforceable under the *Residential Tenancy Act*.

**Section 7** of the Act provides as follows in respect to claims for monetary losses and for damages made herein:

**7. Liability for not complying with this Act or a tenancy agreement**

- 7(1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.
- 7(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Section 26 of the Act stipulates that a tenant must pay rent in accordance with the tenancy agreement; despite any disagreements the tenant may have with their landlord.

Residential Tenancy Policy Guideline 3 states that Section 44 of the *Residential Tenancy Act* sets out when a tenancy agreement will end. A tenant is not liable to pay rent after a tenancy agreement has ended pursuant to these provisions,

Section 44(1)(d) of the *Act* stipulates that tenancy ends on the date the tenant vacates or abandons the rental unit.

In this case I find the tenancy ended on August 11, 2014 when the Tenant vacated the rental unit, pursuant to section 44(1)(d) of the Act. The undisputed evidence was the parties mutually agreed the Tenant would prepay \$700.00 for his last month's rent and that prepayment was made on or around April 21, 2014. The undisputed evidence is the Tenant had paid his rent in full on July 15, 2014 for the period of July 15, 2014 to August 14, 2014.

Section 67 of the Residential Tenancy Act states:

Without limiting the general authority in section 62(3) [*director's authority*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

Based on the above, I conclude that the Landlord has been paid twice for the Tenant's last month's rent; first on April 21, 2014 and again on July 15, 2015. Accordingly, I find the Landlord is not entitled to retain the prepayment of rent she collected back on April 21, 2014. Therefore, I grant the Tenant's application in the amount of **\$700.00** prepaid rent plus \$0.00 interest.

Section 72(1) of the Act stipulates that the director may order payment or repayment of a fee under section 59 (2) (c) [*starting proceedings*] or 79 (3) (b) [*application for review of director's decision*] by one party to a dispute resolution proceeding to another party or to the director.

The Tenant has primarily succeeded with their application; therefore, I award recovery of the **\$50.00** filing fee, pursuant to section 72(1) of the Act.

#### Conclusion

The Tenant has succeeded with his application and has been awarded monetary compensation in the amount of **\$750.00** (\$700.00 + \$50.00).

The Tenant has been issued a Monetary Order for **\$750.00**. This Order is legally binding and must be served upon the Landlord. In the event that the Landlord does not comply with this Order it may be filed with the 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: July 03, 2015

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Residential Tenancy Branch

