



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDC, OLC, O

### Introduction

This hearing convened as a result of a Tenant's Application for Dispute Resolution wherein she sought a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act* (the "*Act*"), the *Regulations*, or the tenancy agreement, an Order that the Landlord comply with the *Act*, and to recover the filing fee.

Only the Tenant appeared at the hearing. She gave affirmed testimony and was provided the opportunity to present her evidence orally and in written and documentary form, and to make submissions to me.

The Tenant testified she served the Landlord with the Notice of Hearing and her corrected Application for Dispute Resolution on October 21, 2015 by registered mail. Introduced in evidence was a copy of a text message from the property owner, J.F., who was named as the Landlord on the Tenant's Application for Dispute Resolution. In this text message, J.F. confirms his address for delivery. The Tenant confirmed that she sent the registered mail package to this address. Further, the Tenant provided a copy of the registered mail tracking number in evidence and advised that the package was refused by the Landlord. A party cannot avoid service of documents by refusing or neglecting to accept registered mail. Under the *Act* documents served this way are deemed served five days later; accordingly, I find the Landlord was duly served as of October 26, 2015.

The Tenant advised that she vacated the rental unit such that she no longer sought an Order pursuant to section 62(3) that the Landlord comply with the *Act*. Accordingly, this request is noted as withdrawn and I make no findings of law or fact with respect to this claim.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Issues to be Decided

1. Is the Tenant entitled to monetary compensation from the Landlord?
2. Should the Tenant recover the filing fee?

### Background and Evidence

Introduced in evidence was a copy of the Residential Tenancy Agreement dated July 26, 2013 and which indicated the tenancy was for a fixed 1 year term commencing August 15, 2013 after which it was to continue on a month to month basis. Monthly rent was payable in the amount of \$850.00 per month on or before the 2<sup>nd</sup> of the month. The Tenant paid a security deposit of \$425.00 and a pet damage deposit of \$425.00 for a total of \$850.00 (the "Deposits").

The Tenant testified that she vacated the rental unit on November 1, 2015 and claims she did so as the rental unit was inhabitable due to the downstairs' neighbours smoking cigarettes and marijuana. Introduced in evidence was a letter from the Tenant to the Landlord dated October 28, 2015 wherein she advises the Landlord she intends to vacate the rental unit on November 1, 2015. Notably, although she provides a post office box in this letter, she did not request return of her Deposits, nor does she confirm the address as her forwarding address to which the Deposits should be sent.

Also introduced in evidence by the Tenant was an undated letter from her friend, C.W., who writes that she was in the rental unit on October 6, 2015 and smelled marijuana smoke. She writes that she was visiting with the Tenant and her seven year old daughter and had to leave because of the smoke.

The Tenant claimed she was forced to move from the rental unit as a result of the cigarette and marijuana smoke which came from the other rental accommodation in the rental home. She claimed she was forced to move out because of the smell, and the negative effect on her breathing and what she described as her restricted airways.

The Tenant also stated that she was also forced to call the police on the other renters because of their excessive marijuana smoking.

The Tenant provided a Monetary Orders Worksheet wherein she claimed the sum of \$5,268.44 for the following:

|   |                   |
|---|-------------------|
| Moving costs  | \$1,100.00        |
| Replacement of Tenant's couch                         | \$713.44          |
| Replacement of Tenant's queen sized bed               | \$1,560.00        |
| Replacement of Tenant's daughter's twin foam mattress | \$170.00          |
| Security deposit                                      | \$425.00          |
| Rent for 1 month 10 days                              | \$1,150.00        |
| Estimated utilities for September and October         | \$150.00          |
| <b>Total claimed</b>                                  | <b>\$5,268.44</b> |

The Tenant testified that she moved out in "such a rush" that she had to hire movers at a cost of \$1,100.00. In her application before me she sought recovery of this amount.

The Tenant claimed that her couch, her queen bed and her daughter's twin bed were all damaged by the smoke and required replacing. She testified that she disposed of her couch but that the beds are in storage as she is financially unable to replace them at this time.

The Tenant confirmed that she also sought compensation for the rent she anticipated paying at another rental, as well as the security deposit and utilities. She confirmed she has not yet paid these amounts as she has not found alternate accommodation.

During the hearing the Tenant also stated that she sought recovery of her security deposit in the amount of \$425.00 as well as the pet damage deposit in the amount of \$425.00 (the "Deposits"). The Tenant confirmed that at the time she made her application she had not yet moved, such that she did not make these claims on her Application for Dispute Resolution. She also confirmed that while she gave notice to end her tenancy on October 28, 2015, she had not provided the Landlord with written confirmation of her forwarding address to which she wanted her deposits paid.

As explained in the hearing, the Landlord was not given notice of the Tenant's intention to recover her Deposits. Further, as she had not given the Landlord written notice that she wanted her Deposits returned to a particular address, she was advised that her application with respect to return of her Deposits was premature.

### Analysis

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities.

Awards for compensation are provided in sections 7 and 67 of the *Act*. Accordingly, an applicant must prove the following:

1. that the other party violated the *Act*, regulations, or tenancy agreement;
2. that the violation caused the party making the application to incur damages or loss as a result of the violation;
3. the value of the loss; and,
4. that the party making the application did whatever was reasonable to minimize the damage or loss.

In this instance, the burden of proof is on the Tenant to prove the existence of the damage/loss and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the Landlord. Once that has been established, the Tenant must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the Tenant took reasonable steps to minimize the damage or losses that were incurred.

Moving expenses are a consequence of tenancies as the Tenants cannot rely on perpetual occupancy. In the normal course they are not recoverable under the *Residential Tenancy Act*. The Tenant provided evidence that she gave notice to end her tenancy on October 28, 2015 and moved three days later, on November 1, 2015. While she may have felt that she needed to move in a “rush” this does not impose an obligation on her Landlord to cover her moving expenses. Accordingly, her request for \$1,100.0 for moving costs is dismissed.

The Tenant claimed her couch, queen sized bed and twin bed were rendered unusable as a result of the downstairs Tenants’ cigarette and marijuana smoking. She confirmed she had disposed of her couch, but had yet to replace the beds. She provided no evidence to support a finding that these items were unusable, save and except for her testimony. Acknowledging that her testimony was undisputed at the hearing, I must still find an evidentiary basis for a monetary claim. Such evidence might have included attempts to have these furniture items professionally cleaned followed by evidence from

a professional cleaner that the items were unusable. Such efforts would have also shown the Tenant mitigated her loss by first attempting to have the items cleaned. In all the circumstances, I am unable to find that the Tenant suffered a recoverable loss under the *Residential Tenancy Act, Regulation* or tenancy agreement with respect to her couch and two beds.

The Tenant also claimed expenses relating to her rent, security deposit and estimated utilities at her new rental. Such expenses are not “losses” as the Tenant would have incurred them in any case, and furthermore are not recoverable under the *Act*. Further, the Tenant testified that she had yet to move such that she has not in fact incurred these expenses. Her request for compensation for these expenses is also dismissed.

During the hearing the Tenant asked if she would be responsible for the November 2015 rent. This question suggests the Tenant is anticipating an Application for a Monetary Order by the Landlord due to the late notice to end tenancy given by the Tenant. Be that as it may, the Tenant must have a valid claim for monetary compensation from the Landlord. In this instance, I find the Tenant has not proven her claims. As noted during the hearing and in this my Decision the Tenant is at liberty to apply for return of her Deposits after she satisfies the requirements in section 38(1)(b) by providing the Landlord with written notice of the forwarding address to which she wants her Deposits sent.

Based on all of the above, the evidence and testimony, and on a balance of probabilities, I dismiss the Tenant’s claim in its entirety.

### Conclusion

The Tenant’s claim is 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: November 23, 2015

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Residential Tenancy Branch

