



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNSD, FF

### Introduction

This hearing was convened as the result of the landlord's application for dispute resolution under the Residential Tenancy Act ("Act"). The landlord applied for authority to keep all or part of the tenant's security deposit AND for recovery of the filing fee paid for this application.

The landlord and tenant attended, the hearing process was explained and they were given an opportunity to ask questions about the hearing process.

At the outset of the hearing, each party confirmed receiving the other's evidence.

Thereafter the participants were provided the opportunity to present their evidence orally, refer to relevant evidence submitted prior to the hearing, 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 retain the tenant's security deposit and to recovery of the filing fee paid for this application?

### Background and Evidence

The undisputed evidence shows that this tenancy began on June 1, 2008, that the beginning monthly rent was \$700.00, increased latterly to \$800.00, and that the tenant paid a security deposit of \$400.00, which has been retained by the landlord.

The landlord submitted that the tenancy ended on July 31, 2014, when he received the keys from the tenant, and the tenant submitted that he vacated the rental unit on July 15, 2014.

The parties were in a prior dispute resolution proceeding, on the tenant's application seeking, among other things, a return of his security deposit.

In the Decision of June 2, 2015, another Arbitrator found that the tenant had not proven that he had provided the tenant a written forwarding address, and allowed the landlord until June 22, 2015, to make his own application claiming against the tenant's security deposit. This was the landlord's application.

The landlord's monetary claim was \$800.00, although he only claimed for retention of the tenant's security deposit of \$400.00.

In support of his application, the landlord submitted that the tenant did not return the keys to the rental unit until July 31, 2014, and as he had no access to the rental unit until that time, the landlord was not able to discover that there was smoke damage to the rental unit, preventing him from re-renting the rental unit for the month of August 2014. Due to this, he suffered a loss of rent revenue, according to the landlord.

The landlord's relevant evidence included a note from landlord "AM".

*Tenant's response-*

The tenant submitted that he received 1 Month Notice to End Tenancy for Cause (the "Notice") on June 11, 2014 from AM requiring that he vacate the rental unit by July 11, 2014, and that he vacated by July 15, 2014, after paying the monthly rent for July 2014.

The tenant submitted that as AM would not reimburse him a prorated amount of rent for July 2014, the keys were returned by the end of July 2014.

The tenant denied damaging the rental unit and submitted that instead, the rental unit was damaged prior to the tenancy beginning and during the tenancy at the hands of other tenants in the residential property.

The tenant's relevant evidence included written submissions

### 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 results. Section 7(2) also requires that the claiming party do whatever is reasonable to minimize their loss. Under section 67 of the Act, an arbitrator may determine the amount of the damage or loss resulting from that party not complying with the Act, the regulations or a tenancy agreement, and order that party to pay compensation to the other party. The claiming party has the burden of proof to substantiate their claim on a balance of probabilities.

In the case before me, I find the landlord submitted insufficient evidence to support his claim that he suffered a loss of rent revenue for the month following the tenancy, or August 2014, due to alleged damage by the tenant.

I find that a key factor in establishing a claim for damage allegedly caused by a tenant is the record of the rental unit at the start and end of the tenancy as contained in condition inspection reports. Sections 23, 24, 35, and 36 of the Act deal with the landlord and tenant obligations in conducting and completing the condition inspections.

In the circumstances before me, the landlord has not provided evidence that he conducted move-in or move-out inspection reports, resulting in the landlord being unable to establish the condition of the rental unit either at the beginning of the tenancy or at the end. The landlord also failed to produce any other independent records showing the state of the rental unit at the start and end of the tenancy.

In the absence of any such evidence, I find the landlord has not met his burden of proof on the balance of probabilities that the tenants caused damage to the rental unit or left the rental unit unreasonably clean which resulted in a loss of rent revenue. Due to the insufficient evidence of the landlord, I therefore dismiss the claim of the landlord.

I therefore dismiss the landlord's application, including his request to recover the filing fee, without leave to reapply.

As I have dismissed the landlord's claim against the tenant's security deposit, I order the landlord to return the tenant's security deposit of \$400.00, plus interest of \$3.51, immediately.

To give effect to this order, I grant the tenant a final, legally binding monetary order pursuant to section 67 of the Act for the amount of their security deposit of \$403.51, which is enclosed with the tenant's Decision.

Should the landlord fail to pay the tenant this amount without delay, the monetary order must be served upon the landlord for enforcement, and may be filed in the Provincial Court of British Columbia (Small Claims) for enforcement as an Order of that Court. The landlord is advised that costs of such enforcement are recoverable from the landlord.

### Conclusion

The landlord's application is dismissed, without leave to reapply.

The landlord is ordered to return the tenant's security deposit, plus interest, immediately, and the tenant is granted a monetary order in the amount of his security deposit plus interest of \$403.51 in the event the landlord does not comply with this order.

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: December 7, 2015

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Residential Tenancy Branch

