



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDC

### Introduction

This hearing convened as a result of the Tenant's Application for Dispute Resolution wherein the Tenant requested monetary compensation in the \$4,089.70.

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

The Tenant testified he served the Landlord with the Notice of Hearing and their Application on February 27, 2016 by registered mail. A copy of the tracking number for the registered mail was introduced in evidence and is reproduced on the cover page of this my Decision.

*Residential Tenancy Policy Guideline, "12. Service Provisions"* provides that service cannot be avoided by refusing or failing to retrieve registered mail:

Where a document is served by registered mail, the refusal of the party to either accept or pick up the registered mail, does not override the deemed service provision. Where the registered mail is refused or deliberately not picked up, service continues to be deemed to have occurred on the fifth day after mailing.

Under the Act documents served this way are deemed served five days later; accordingly, I find the Landlord was duly served as of March 3, 2016 and I proceeded in this absence.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, not all details of the Tenant's submissions and or argument are reproduced here; further, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue to be Decided

Is the Tenant entitled to monetary compensation from the Landlord?

Background and Evidence

Introduced in evidence was a copy of a residential tenancy agreement indicating the tenancy was to begin on December 1, 2015.

The Tenant testified that he paid the Landlord \$360.00 as a security deposit in cash and received a receipt for this payment. He stated that three days later he paid the Landlord another \$360.00 for half of the December 1, 2015 rent.

The Tenant stated that the Landlord offered the Tenant the opportunity to move in on the weekend, three days earlier than the intended start date of the tenancy. The Tenant further stated he was not able to move into the rental unit early and when he came on the 1<sup>st</sup> of the month, the Landlord appeared to be upset with the Tenant. The Tenant testified that the Landlord refused the Tenant access to the rental unit when he arrived to move into the rental unit. The Landlord stated to the Tenant "I don't think you are going to be responsible enough". The Tenant testified that the Landlord returned the \$360.00 security deposit and the \$360.00 payment for half a month's rent but refused him occupation.

The Tenant stated that he was without alternate accommodation as he had intended to move into the rental unit. Accordingly, he claimed the following compensation from the landlord:

Storage cost for the month of December 2015	\$68.25
Labour for movers	\$60.00
Gas	\$20.00
Lost wages	\$300.00
Additional fuel costs due to location of temporary lodging	\$200.00
Motel rooms and food costs due to not having a kitchen	\$560.00
Reimbursement of funds borrowed from Tenant's parents	\$860.00
Pain and suffering	\$2,000.00
<b>TOTAL of the above</b>	<b>\$4,086.25</b>
<b>TOTAL CLAIMED by Tenant in his written submissions</b>	<b>\$4,089.70</b>

When I asked the Tenant whether the \$860.00 claimed as a loan from his parents was to pay the additional expenses he incurred in December of 2015 he confirmed those funds were used for that purpose, such that the \$860.00 claim is a duplication of some of the amounts claimed. Tenant confirmed that he was not asking to be paid twice. Accordingly, the amounts claimed by the Tenant should be reduced by \$860.00 for a total of **\$3,226.25**. This amount does not include the Tenant's request for recovery of the \$100.00 filing fee such that the claim before me was for \$3,326.25.

The Tenant confirmed that because he was not able to move into the rental unit, he was forced to rent a hotel in a community which was 35 kilometers further from his work. He stated that he tried to find an inexpensive hotel in the community in which he works, but was not able to do so until later in the month. He confirmed that hotel accommodation during that month, in the community in which he works, was nearly double the cost.

The Tenant stated that he was able to secure permanent accommodation February 1, 2016.

### Analysis

In a claim for damage or loss under section 67 of the *Act* or the tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities. In this case, the Tenant has the burden of proof to prove their claim.

Section 7(1) of the *Act* provides that if a Landlord or Tenant does not comply with the *Act*, regulation or tenancy agreement, the non-complying party must compensate the other for damage or loss that results.

Section 67 of the *Act* provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

To prove a loss and have one party pay for the loss requires the claiming party to prove four different elements:

- proof that the damage or loss exists;
- proof that the damage or loss occurred due to the actions or neglect of the responding party in violation of the *Act* or agreement;

- proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
- proof that the applicant followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

After careful consideration of the evidence before me, and the undisputed testimony of the Tenant I find as follows.

Pursuant to section 16 of the *Act*, I find that a binding tenancy agreement existed between the parties; for greater clarity the section reads as follows:

- 16** The rights and obligations of a landlord and tenant under a tenancy agreement take effect from the date the tenancy agreement is entered into, whether or not the tenant ever occupies the rental unit.

I further find that the Landlord breached the *Act* and the tenancy agreement by refusing the Tenant occupancy at the start of the tenancy. A tenancy ends only in accordance with the *Act*, and in particular section 44, which reads as follows:

#### **How a tenancy ends**

**44** (1) A tenancy ends only if one or more of the following applies:

(a) the tenant or landlord gives notice to end the tenancy in accordance with one of the following:

- (i) section 45 [*tenant's notice*];
- (ii) section 46 [*landlord's notice: non-payment of rent*];
- (iii) section 47 [*landlord's notice: cause*];
- (iv) section 48 [*landlord's notice: end of employment*];
- (v) section 49 [*landlord's notice: landlord's use of property*];
- (vi) section 49.1 [*landlord's notice: tenant ceases to qualify*];
- (vii) section 50 [*tenant may end tenancy early*];

(b) the tenancy agreement is a fixed term tenancy agreement that provides that the tenant will vacate the rental unit on the date specified as the end of the tenancy;

(c) the landlord and tenant agree in writing to end the tenancy;

(d) the tenant vacates or abandons the rental unit;

(e) the tenancy agreement is frustrated;

(f) the director orders that the tenancy is ended.

(2) [Repealed 2003-81-37.]

(3) If, on the date specified as the end of a fixed term tenancy agreement that does not require the tenant to vacate the rental unit on that date, the landlord and tenant have not entered into a new tenancy agreement, the landlord and tenant are deemed to have renewed the tenancy agreement as a month to month tenancy on the same terms.

In a claim for damage or loss under section 67 of the *Act* or the tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities. In this case, the Landlord has the burden of proof to prove their claim.

Section 7(1) of the *Act* provides that if a Landlord or Tenant does not comply with the *Act*, regulation or tenancy agreement, the non-complying party must compensate the other for damage or loss that results.

Section 67 of the *Act* provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

To prove a loss and have one party pay for the loss requires the claiming party to prove four different elements:

- proof that the damage or loss exists;
- proof that the damage or loss occurred due to the actions or neglect of the responding party in violation of the *Act* or agreement;
- proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
- proof that the applicant followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

In the case before me I find that the Tenant suffered a financial loss as a result of the Landlord's breach of the tenancy agreement and the *Act*. I accept that the Tenant was without alternate accommodation having expected to move into the rental at the start of the tenancy.

I accept that the Tenant incurred storage costs for the month of December as a result of having to move into temporary accommodation. Accordingly, I award him the **\$68.25** claimed.

Although moving expenses are not normally recoverable, I am satisfied based on the Tenant's testimony that the labour charges and gas he seeks to recover relate to the unexpected and additional time associated with the Tenant having to move his items from the rental unit, to a storage facility. Accordingly, I award him the **\$60.00** claimed for the amounts paid to mover, and the **\$20.00** in gas.

I also award the Tenant the **\$300.00** in lost wages based on his undisputed testimony that he missed work due to having to find temporary, then permanent accommodation, as well as the addition time he spent moving his items.

I similarly find that the Tenant has proven he suffered a loss, related to additional fuel costs, due to the location of his temporary lodging. I accept his evidence that the cost of accommodation in the city in which he works, particularly at the time of year he was forced to seek such temporary accommodation is significantly higher than the community in which he found temporary accommodation. In securing accommodation elsewhere, I find that he mitigated his losses, even when the additional fuel costs are taken into consideration. Accordingly, I award him recovery of the **\$200.00** claimed for additional fuel costs.

I similarly award the Tenant the **\$560.00** claimed for his motel rooms and food costs due to not having a kitchen during the month of December. I find these are reasonable expenses and directly related to the Landlords breach.

As noted previously in this my Decision, the Tenant borrowed \$860.00 from his parents. This amount is already factored into the above awarded amounts and I therefore decline his request for compensation for these loaned funds.

Although I acknowledge the situation created by the Landlord was frustrating and likely very upsetting, I find the Tenant has failed to prove his claim for pain and suffering. Accordingly, I decline his request for \$2,000.00 for these general damages.

In summary, I award the Tenant the amount of **\$1,208.25**.

Storage cost for the month of December 2015	\$68.25
Labour for movers	\$60.00
Gas	\$20.00
Lost wages	\$300.00

Additional fuel costs due to location of temporary lodging	\$200.00
Motel rooms and food costs due to not having a kitchen	\$560.00
<b>TOTAL</b> of the above	<b>\$1,208.25</b>

The Tenant is granted a Monetary Order for this amount and must serve the Order on the Landlord. If the Landlord fails to pay the Ordered amount the Tenant may file and enforce the Monetary Order in the B.C. Provincial Court (Small Claims Division).

#### Conclusion

The Tenant is awarded the sum of **\$1,208.25** for losses associated with the Landlord's breach of the tenancy agreement and the *Residential Tenancy Act*.

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: October 28, 2016

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Residential Tenancy Branch