



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes                      MNDC, FF, O

### Introduction

This hearing was convened by way of conference call in response to the tenant's application for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement; other issues; and to recover the filing fee from the landlord for the cost of this application.

The tenant and landlord attended the conference call hearing, and were given the opportunity to be heard, to present evidence and to make submissions under oath. The tenant provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. The landlord confirmed receipt of evidence. 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.

### Issue(s) to be Decided

Is the tenant entitled to a Monetary Order for money owed or compensation for damage or loss?

### Background and Evidence

The parties agreed that this month to month tenancy started on September 01, 2016. There was no written tenancy agreement in place between the parties; however, a verbal agreement was reached for the rent for this unit to be \$1,000.00 per month due on the first of each month. The tenant had paid a security deposit of \$500.00 at the start of the tenancy and this has been returned to the tenant. The tenancy ended on October 24, 2016.

The tenant testified that there was a difference of opinion between the tenant and landlord about what was happening in the tenant's unit. The landlord accused the tenant of doing things that just did not happen. The tenant referred to his documentary evidence provided for this hearing particularly the text messages.

On October 18, 2016 the landlord sent the tenant a text complaining about late night visitors and stated that maybe this is not the right place for the tenant. The tenant's text message sent on October 19, 2016 at 11.32 a.m. broaches the subject of the tenant's offer to vacate by Saturday at noon if the landlord returns half the month's rent and the security deposit because of the unfounded accusations. The landlord's response to this text message is unclear as the first response says Ss and the second response says A. The tenant sent another text on October 21, 2016 at 3.36 p.m. stating in part that the landlord's earlier text saying "maybe this isn't the right place for you" implies that the landlord preferred the tenant lives elsewhere. The tenant goes on to write asking the landlord if it is possible to expedite the tenant vacating the premises then please reply with what the landlord would consider to be a fair suggestion; at 6.48 p.m. the landlord responded 1Mo. The landlord responded again at 09.18 p.m. saying she did not know what the tenant was talking about and that she thought the tenant was leaving tomorrow at noon, the sooner the better as far as she was concerned and that the tenant lives in her unit as a lodger.

The tenant testified that the text messages clearly imply that the landlord was happy for the tenant to vacate the rental unit. On October 22, 2016 at 11.04 a.m. the landlord asked the tenant for a letter stating when he was vacating the premise. The tenant sent a text message at 3.30 on October 22 and advised the landlord that the unit would be available for a move out inspection on October 24, 2016 and tried to arrange a move out inspection. In this text message the tenant also writes that the funds owed to him are \$32.25 X7 for the months remaining (prorated) days amounting to \$225.75 and \$500.00 for the security deposit. The landlord responded on October 22, 2016 at 4.01 and writes that the tenant is absolutely right. His amount was fine but the landlord has never paid with cash nor will she.

The tenant testified that as the landlord agreed in writing on a text message that the tenant could end the tenancy earlier than the end of the month and agreed that the amount the tenant

requested was absolutely right. The tenant therefore seeks to recover the prorated rent of \$225.75. The security deposit of \$500.00 was returned to the tenant.

The tenant also seeks to recover the filing fee of \$100.00.

The landlord disputed the tenant's application. The landlord testified that this tenancy does not fall under the *Residential Tenancy Act (Act)* as the tenant lives in the landlord's home and is a lodger. The landlord argued that at a previous hearing the Arbitrator ruled that the *Act* and therefore the Residential Tenancy Branch did not have jurisdiction as the tenant at that time was just a lodger. The landlord agreed that the tenant and landlord did not share bathroom or kitchen facilities and that the tenant has these facilities in his own unit.

The landlord testified that if she had agreed to pay the tenant this amount it was in error. The landlord testified that the tenant knew the rules that he had to be quiet after 10.00 p.m. and no visitors after 11.00 p.m. and no guests staying over. The tenant woke the landlord up at night and the tenant's visitors would sneak in. When the landlord pointed this out to the tenant the tenant asked if he could leave early. The landlord testified that she did agree the tenant could leave early but that he was to provide a formal letter stating when he was leaving. The tenant wanted cash for his security deposit but was told he would get back what he was supposed to get back. The landlord testified that she could not wait for the tenant to move out but it was the tenant's decision to move and not the landlords. The unit was not re-rented for another two months although the landlord agreed she did not advertise it.

The tenant testified that he relied on the landlord's written text messages that it was alright to vacate on October 24, 2016 and that the landlord would reimburse the tenant the security deposit and the prorated rent of \$225.75.

### Analysis

After careful consideration of the testimony and documentary evidence before me and on a balance of probabilities I find as follows:

I will address first the issue of jurisdiction raised by the landlord. I refer the parties to s. 4 of the *Act* which provides for certain criteria in which the *Act* does not apply:

**What this Act does not apply to**

**4** *This Act does not apply to*

- (a) living accommodation rented by a not for profit housing cooperative to a member of the cooperative,*
- (b) living accommodation owned or operated by an educational institution and provided by that institution to its students or employees,*
- (c) living accommodation in which the tenant shares bathroom or kitchen facilities with the owner of that accommodation,*
- (d) living accommodation included with premises that
  - (i) are primarily occupied for business purposes, and*
  - (ii) are rented under a single agreement,**
- (e) living accommodation occupied as vacation or travel accommodation,*
- (f) living accommodation provided for emergency shelter or transitional housing,*
- (g) living accommodation
  - (i) in a community care facility under the [Community Care and Assisted Living Act](#),*
  - (ii) in a continuing care facility under the [Continuing Care Act](#),*
  - (iii) in a public or private hospital under the [Hospital Act](#),*
  - (iv) if designated under the [Mental Health Act](#), in a Provincial mental health facility, an observation unit or a psychiatric unit,*
  - (v) in a housing based health facility that provides hospitality support services and personal health care, or*
  - (vi) that is made available in the course of providing rehabilitative or therapeutic treatment or services,**
- (h) living accommodation in a correctional institution,*

- (i) living accommodation rented under a tenancy agreement that has a term longer than 20 years,*
- (j) tenancy agreements to which the [Manufactured Home Park Tenancy Act](#) applies, or*
- (k) prescribed tenancy agreements, rental units or residential property.*

The landlord argued that the tenant rented a section in the basement of her home and although she agreed the tenant did not share kitchen or bathroom facilities with the landlord the landlord argued that the tenant was a lodger. There is no criteria for this tenancy not to be included under the *Act* as the tenant did not share kitchen or bathroom facilities with the landlord. Under s. 5 of the *Act* the landlord may not avoid or contract out of the *Act* and any attempt to do so has no effect. I therefore find the *Act* does apply in this tenancy and I do have jurisdiction to hear this matter.

Having considered the content of the text messages, I find the landlord appeared to write conflicting things in her text message responses. The landlord appeared to want a month's notice but then later also accepted that the tenant was vacating on October 24, 2016 and made it clear that she wanted the tenant to leave. In the text messages regarding the tenant's request for the landlord to return the prorated amount of rent for October and his security deposit if he did end the tenancy early, also appears to have been accepted by the landlord in her text message in which she responded "the tenant is absolutely right. His amount was fine but the landlord has never paid with cash nor will she".

Although I find the landlord's text messages to be confusing, this single message standing alone appears that she accepts the tenant's offer to vacate early and that she will pay him the amount of \$225.50 for the prorated rent for the month of October. I further find the tenant relied on this agreement when considering whether to vacate early and expected the landlord to return the rent paid for the remainder of October. Therefore, this constitutes an agreement between the parties to end the tenancy and that the landlord will return the rent paid and the security deposit. As the landlord did not return the rent paid for the final seven days it is my decision that the tenant is entitled to recover this amount of **\$225.75** from the landlord and will receive a Monetary Order pursuant to s. 67 of the *Act*.

As the tenant's application has merit the tenant is also entitled to recover the filing fee of **\$100.00** from the landlord pursuant to s. 72(1) of the *Act*.

Conclusion

I HEREBY FIND in favor of the tenant's monetary claim. A copy of the tenant's decision will be accompanied by a Monetary Order for **\$325.75**. The Order must be served on the landlord. Should the landlord fail to comply with the Order the Order may be enforced through the Provincial (Small Claims) Court of British Columbia 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: June 13, 2017

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Residential Tenancy Branch