



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Dispute Codes**

MNDC, MNSD, FF

### **Introduction**

This hearing was convened in response to an application filed by the landlord seeking money owed or compensation for damage or loss under the Act, regulation or tenancy agreement and retention of the security deposit in partial satisfaction of their claim and to recover the filing fee.

I accept the landlord's evidence that despite the tenant having been served with the application for dispute resolution and notice of hearing and the landlord's evidence by *registered mail* in accordance with Section 89 of the Residential Tenancy Act (the Act) the tenant did not participate in the conference call hearing. I find the tenant is deemed served in accordance with the Act. The landlord was given full opportunity to be heard, to present evidence and to make submissions.

### **Issue(s) to be determined**

Is the landlord entitled to the monetary amounts claimed?

### **Background and Evidence**

The undisputed evidence in this matter is that the agreement for the tenancy was entered into on January 29, 2017 for a tenancy start date of March 01, 2017. The landlord collected deposits from the tenant in the sum of \$1225.00. On February 03, 2017 the tenant informed the landlord they would not be occupying the unit. As a result the landlords travelled a second time from the mainland to Vancouver Island in order to mitigate their potential loss of revenue, and were successful in doing so. The landlord claims they expended travel costs for the trip to Vancouver Island consisting of ferry service, motor vehicle fuel and meals / food costs in the receipted claim sum of \$255.80. The landlord claims these associated costs incurred in order to re-rent the unit, as well as the registered mail costs and filing fee related to this application.

The landlord submitted evidence the tenant requested return of their deposits, of which the landlord returned \$848.70 and retained the balance of \$376.30 to accommodate their claim.

### **Analysis**

In this type of matter the burden of proving claims of loss rests on the claimant (landlord) who must establish, on a balance of probabilities that they have suffered a loss due to the tenant's neglect, or failure to comply with the Act. And, if so established, proof the landlord took reasonable steps to mitigate or minimize the loss. Section 7 of the Act outlines the foregoing as follows:

#### **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.

(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.

Effectively, the landlord bears the burden of establishing their claim by meeting all of the components prescribed by Section 7. The landlord must prove the existence of the loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the landlord. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss. Finally, the claimant must show that reasonable steps were taken to address the situation and to mitigate the losses that were incurred.

I find the landlord has shown that the tenant's non-compliance with the Act resulted in a potential loss to the landlord which was not anticipated and it must be emphasized that the landlord took reasonable steps to mitigate potential rent revenue losses going forward. However, for the landlord to be successful in recovering their claim for travel costs to and from Vancouver Island would require a finding that the tenant is responsible for the landlord's distance from the rental unit and consequent choice or need to travel and expend travel costs. It is not the tenant's fault the landlord resides remotely and travel costs were incurred as claimed. In this type of matter, and moreover in this matter it may be appropriate to view the landlord's claim as a cost of doing business. In addition, I find the tenant is not responsible for the landlord's arbitrary costs such as for meals or the amount of fuel, although it cannot be said their claims are extravagant. It must further be known that all parties to the dispute are

responsible for their own litigation costs, other than the filing fee, for such expenditures as mailings or copying costs or other costs associated with advancing one's claims. As a result, I find the landlord has not sufficiently met the test for loss as prescribed by Section 7 of the Act so as to be wholly successful in their application. However, in this matter I find it appropriate to grant the landlord *nominal compensation* in the set amount of **\$250.00**. An Arbitrator may award *nominal damages* or a nominal award which is a minimal award granted where there has been no significant loss, or in this matter where no significant loss has been proven, but they are an affirmation that there has been an infraction of a legal right. The deposit held in trust by the landlord will be offset as Ordered.

### **Conclusion**

The landlord's application in relevant part is granted.

**I Order** that the landlord may retain \$250.00 of the tenant's remaining deposit of \$376.30 in satisfaction of the landlord's claim and I grant the tenant an Order under Section 67 of the Act for the balance in trust of **\$126.30**. If necessary, this Order may be filed in the Small Claims Court and enforced as an Order of that Court.

**This Decision is final and binding.**

*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 25, 2017

---

Residential Tenancy Branch