



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNDC, O, FF

### Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* ("Act") for:

- a monetary order for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* or tenancy agreement, pursuant to section 67;
- other remedies, identified as an order of possession based on a fixed term tenancy agreement, pursuant to section 55; and
- authorization to recover the filing fee for this application, pursuant to section 72.

The tenant did not attend this hearing, which lasted approximately 28 minutes. The landlord attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

The landlord testified that the tenant was served with the landlord's application for dispute resolution hearing package on August 2, 2017, by way of registered mail to the rental unit where the tenant is still residing. The landlord provided a Canada Post receipt and tracking number as proof of service with this application. The landlord confirmed that the application was returned to sender as unclaimed. In accordance with sections 89 and 90 of the *Act*, I find that the tenant was deemed served with the landlord's application on August 7, 2017, five days after its registered mailing.

### Issues to be Decided

Is the landlord entitled to a monetary order for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* or tenancy agreement?

Is the landlord entitled to an order of possession based on a fixed term tenancy agreement?

Is the landlord entitled to recover the filing fee for this application?

### Background and Evidence

The landlord testified regarding the following facts. This tenancy began on March 1, 2015 and the tenant continues to reside in the rental unit. Monthly rent in the amount of \$1,400.00 is payable on the first day of each month. A security deposit of \$675.00 was paid by the tenant and the landlord continues to retain this deposit. Multiple fixed term tenancy agreements were signed by the parties for this tenancy. The most recent written fixed term tenancy agreement was signed by both parties and a copy was provided for this hearing.

The most recent written tenancy agreement, on a standard RTB form, indicates that this tenancy is for a fixed term of six months from March 1, 2017 and ending on August 31, 2017, after which the tenancy ends and the tenant must move out of the residential unit. Both the tenant and landlord initialled the boxes on the form beside that provision. The landlord provided an email, dated July 23, 2017, indicating that the tenant was required to leave by 1:00 p.m. on August 31, 2017, as per the parties' tenancy agreement, which the landlord said would not be renewed. He said that the tenant refuses to vacate the rental unit.

The landlord seeks a monetary order of \$1,835.00 plus the \$100.00 application filing fee. The landlord seeks \$25.00 for the remainder of the security deposit that the tenant did not pay as required by the written tenancy agreement. He said that the deposit is half the rent, so the tenant owed \$700.00 but only paid \$675.00. He also seeks \$110.00 for an extra FOB that the tenant was given without paying strata and he provided a strata statement showing that this fee was charged on November 23, 2016. He also provided an email, dated June 5, 2017, to the tenant asking her to reimburse this cost which he said was unknown to him until strata sent him the charged amount. The landlord further seeks \$1,700.00 for a loss of September 2017 rent because he anticipates the tenant will not leave the rental unit and he has been unable to show or re-rent it because the tenant has changed the locks and will not allow access to the unit.

### Analysis

Section 44(1)(b) states the following:

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

*...(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.*

The written tenancy agreement in this situation requires the tenant to vacate the rental unit by the end of the fixed term period. Both parties signed the entire written tenancy agreement and specifically agreed to this fixed term provision by initialling beside it. The landlord also made it clear in an email to the tenant that the tenancy was ending on August 31, 2017, as indicated in the tenancy agreement, and that the tenancy agreement would not be renewed with the tenant.

The landlord provided undisputed evidence at this hearing, as the tenant did not attend. Accordingly, I find that as per the terms of this fixed term tenancy agreement, this tenancy ends effective on August 31, 2017 and the tenant is required to vacate the rental unit by 1:00 p.m. on that date. The landlord's application is allowed. I grant the landlord an order of possession effective at 1:00 p.m. on August 31, 2017, pursuant to section 55 of the *Act*.

Section 7(1) of the *Act* establishes that a tenant who does not comply with the *Act*, *Regulation* or tenancy agreement must compensate the landlord for damage or loss that results from that failure to comply. However, section 7(2) of the *Act* places a responsibility on a landlord claiming compensation for loss resulting from a tenant's non-compliance with the *Act* to do whatever is reasonable to minimize that loss.

The landlord provided undisputed evidence that the tenant failed to pay for an additional FOB that she requested to access the rental unit and that he was charged \$110.00 by strata for this cost. The landlord provided a copy of the bill from strata and said that he has not yet paid it but owes the amount. He also provided an email requesting reimbursement from the tenant. Accordingly, I find that the landlord is entitled to \$110.00 for this cost from the tenant.

As notified to the landlord during the hearing, his application for September 2017 rent is premature and dismissed with leave to reapply. The hearing occurred on August 31, 2017, and September 2017 rent is not yet due under the tenancy agreement until September 1, 2017 and it is unknown whether the tenant will vacate by that date or pay the rent to the landlord.

Since the tenancy is ending pursuant to the order of possession issued above, there is no purpose for the tenant to pay the remaining \$25.00 for the security deposit. This amount is due at the beginning of the tenancy when the parties entered into the written tenancy agreement as per section 20(a) of the *Act*. This application is dismissed without leave to reapply.

As the landlord was partially successful in this application, I find that he is entitled to recover the \$100.00 filing fee paid for his application.

The landlord continues to hold the tenant's security deposit, totalling \$675.00. Over the period of this tenancy, no interest is payable on the deposit. In accordance with the offsetting provisions of section 72 of the *Act*, I order the landlord to retain \$210.00 from the tenant's security deposit of \$675.00, in full satisfaction of the monetary award.

#### Conclusion

I grant an Order of Possession to the landlord **effective** at 1:00 p.m. on August 31, 2017. Should the tenant or anyone on the premises fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

I order the landlord to retain \$210.00 from the tenant's security deposit. I order the landlord to deal with the remainder of the tenant's security deposit of \$465.00 in accordance with section 38 of the *Act*.

The landlord's application for September 2017 rent is dismissed with leave to reapply.

The landlord's application to recover \$25.00 for the security deposit is dismissed without leave to reapply.

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: August 31, 2017

---

Residential Tenancy Branch