



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding B.C. HOUSING MGMT.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNDC

### Introduction

This hearing dealt with the tenant's Application for Dispute Resolution seeking to cancel a notice to end tenancy.

The hearing was conducted via teleconference and was attended by the tenant and two agents for the landlord.

In regard to the delay in the writing of this decision I note that Section 77 (1) (d) of the *Act* stipulates that a decision of the director must be given promptly and in any event within 30 days after the proceedings conclude. I also note that Section 77(2) states that the director does not lose authority in a dispute resolution proceeding, nor is the validity of a decision affected, if a decision is given after the 30 day period in subsection (1) (d). I apologize for the delay in this decision.

### Issue(s) to be Decided

The issues to be decided are whether the tenant is entitled to a monetary order for the return of bank charges, pursuant to Sections 67, and 72 of the *Residential Tenancy Act (Act)*.

### Background and Evidence

The landlord has submitted into evidence a copy of a tenancy agreement signed by the parties on September 1, 1984 for a month to month tenancy beginning on September 1, 1984 for a current monthly rent of \$467.00 due on the 1<sup>st</sup> of each month. While the tenancy agreement indicated a different rental unit the parties agreed the tenant moved to a new rental unit under the same terms in March 2000.

The tenant submitted that on June 27, 2016 she received her pension cheque and proceeded to pay her bills online right away. She stated she forgot that her rent is automatically withdrawn from her account by way of a pre-authorized payment agreement.

She submitted that right after she made the payment she called the office to cancel the pre-authorized withdrawal she contacted the office and left a message with the receptionist for the landlord's agent and the assistant but that they took no action and as a result a week later the tenant was charged \$45.00 from her bank as a charge for insufficient funds when the landlord attempted to complete the pre-authorized payment.

The landlord submitted into evidence a copy of a document entitled "Pre-Authorized Rent Payment Authorization Form" signed by the tenant on July 15, 2002 that includes 6 specific terms. Term 5 states: "This authorization may be ended in writing at any time by the Tenant or by BC Housing "with fifteen days notice". Rent thereafter shall be payable direct to BC Housing on or before the first (1<sup>st</sup>) of the month."

The landlord also provided a copy of a letter to the tenant dated July 17, 2002 confirming the tenant had signed up for the pre-authorized payment method and that she must notify the office in writing by the 10<sup>th</sup> of the month if she wished to cancel "this method of payment".

While the tenant did not provide copies of any correspondence to the landlord regarding her request to have the bank charges paid by the landlord the landlord did submit a copy of a letter to the tenant dated October 13, 2016 in response to the tenant's letter of September 18, 2016.

In the October 13, 2016 letter the landlord acknowledges that the tenant did attempt to contact the landlord but that it was too late for them to stop the pre-authorized rental payment. The landlord noted that they would reverse their own administrative charge for a cheque processed having insufficient funds but that they would not cover the bank charges the tenant incurred.

### Analysis

To be successful in a claim for compensation for damage or loss the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss; **and**
4. Steps taken, if any, to mitigate the damage or loss.

Section 67 of the *Act* stipulates if damage or loss results from a party not complying with this *Act*, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

I note that the Pre-Authorized Rent Payment Authorization Form indicates that the tenant must provide at least 15 days' notice and the letter of July 17, 2002 states the tenant must advise the landlord by the 10<sup>th</sup> of month if she wish to cancel the pre-authorization agreement, I find the tenant's intention was not to end the agreement but rather to stop one transaction.

I also note that because the authorization form and the July 17, 2002 letter provide two different deadlines for ending the pre-authorization the authorization would be the relevant date for the tenant to seek to end the agreement.

However, there are not terms in the pre-authorization agreement that speak to the specific incident where a tenant wishes to stop one payment from being processed or what the time requirement would be for the landlord to be able to affect stopping the pre-authorized payment.

Regardless, the tenant has had the pre-authorized rental payments being made since 2002 and that the fact that she made an error and made an online payment to the landlord prior to the pre-authorized payment attempt being made is not the landlord's fault.

I find the tenant has failed to establish that she incurred the loss of \$45.00 for the insufficient funds fee charged by her bank as a result of the landlord violated her tenancy agreement; her pre-authorized payment agreement; the Act, or the regulation.

### Conclusion

Based on the above, I dismiss the tenant's Application for Dispute Resolution in its entirety and 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 24, 2017

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Residential Tenancy Branch