



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MND MNDC MNR MNSD FF

### Introduction

This hearing dealt with the Landlord's Application for Dispute Resolution, dated April 12, 2017 (the "Application"). The Landlord applied for the following relief pursuant to the *Residential Tenancy Act* (the "Act"):

- a monetary order for damage to the unit, site or property;
- an monetary order for money owed or compensation for damage or loss;
- a monetary order for unpaid rent or utilities;
- an order that the Landlord be permitted to retain all or part of the pet damage deposit or security deposit; and
- an order granting recovery of the filing fee.

The Landlord attended the hearing on his own behalf and was assisted by his daughter, R.Y. The Tenant attended the hearing on his own behalf. All parties giving testimony provided a solemn affirmation.

The Landlord testified the Application package was served on the Tenant by registered mail roughly three months ago. A documentary evidence package was recently served on the Tenant by registered mail on August 26, 2017. The Tenant acknowledged receipt of both.

The Tenant submitted documentary evidence in response to the Landlord's Application. He testified it was served on the Landlord by registered mail on August 30, 2017. A Canada Post registered mail receipt was submitted in support. The Landlord confirmed receipt.

No issues were raised with respect to service or receipt of the above documents. The parties were provided with the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. 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.

### Issues to be Decided

1. Is the Landlord entitled to a monetary order for damage to the unit, site or property?
2. Is the Landlord entitled to a monetary order for money owed or compensation for damage or loss?
3. Is the Landlord entitled to a monetary order for unpaid rent or utilities?
4. Is the Landlord entitled to an order allowing them to retain all or part of the pet damage deposit or security deposit?
5. Is the Landlord entitled to an order granting recovery of the filing fee?

### Background and Evidence

The parties confirmed that a fixed-term tenancy began on March 1, 2016, and was to end on February 28, 2017. Although the parties disagree about the terms of an agreement to extend the tenancy, the Tenant vacated the rental unit on or about March 29, 2017. During the tenancy, rent in the amount of \$1,600.00 per month was due on the first day of each month. The Tenant paid a security deposit to the Landlord in the amount of \$800.00, which the Landlord holds.

The Landlord's claim is set out in his Application. First, the Landlord sought \$1,600.00 for unpaid rent for the month of April 2017. R.Y. testified the Tenant was told he could stay as long as he wanted to but that the Landlord required one month's notice. However, on March 2, 2017, the Tenant sent a text to the Landlord advising of his intention to vacate the unit at the end of the month. The Tenant vacated the rental unit on March 29, 2017. The Landlord testified he posted an online advertisement to rent the unit but did not provide a copy. In addition, the Landlord testified he travelled to China from March 3-17, 2017. As a result, the Landlord testified he was unable to re-rent the unit until May 1, 2017, suggesting the Tenant bore some responsibility.

In reply, the Tenant testified there was an agreement the tenancy would continue for one additional month. On March 2, 2017, he sent the Landlord a text message confirming the agreement that he would leave at the end of the month. It stated:

*Because you asked me to give you a month notice, we have seen a place and we are waiting the approval today. Most likely we will be accepted and move out end of this month.*

[Reproduced as written.]

A copy of the text message was submitted with the Landlord's documentary evidence. The Tenant testified it was sent as a courtesy to remind the Landlord of their agreement. The Tenant also testified there was previous email correspondence that confirmed the arrangement between the parties, although these emails were not submitted into evidence.

Second, the Landlord sought to recover \$300.00 for cleaning and repairs to the rental unit. In support, the Landlord submitted various photographs of the interior of the rental unit. A receipt for cleaning in the amount of \$180.00 was submitted by the Landlord.

In reply, the Tenant referred me to the Condition Inspection Report, submitted with his documentary evidence. The move-out condition inspection was conducted on March 29, 2017, and was signed by both parties. The Condition Inspection Report confirmed there was "no damage" to the rental unit. R.Y. responded to this evidence by testifying that the Tenant insisted that the inspection be completed at night, making it difficult to notice the problems with the rental unit. In addition, R.Y. testified that the Tenant refused to return keys to the Landlord unless the Landlord provided him with a signed copy of the Condition Inspection Report.

Finally, the Landlord sought to recover the \$100.00 filing fee paid to make the Application, and requested that the security deposit be applied in partial satisfaction of the claim.

### Analysis

Based on the affirmed oral testimony and documentary evidence, and on a balance of probabilities, I find:

Section 67 of the *Act* empowers me to order one party to pay compensation to the other if damage or loss results from a party not complying with the *Act*, regulations or a tenancy agreement.

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided for in sections 7 and 67 of the *Act*. An applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and
4. That the party making the application did what was reasonable to minimize the damage or loss.

In this case, the burden of proof is on the Landlord to prove the existence of the damage or loss, and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the Tenant. Once that has been established, the Landlord must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the Landlord did what was reasonable to minimize the damage or losses that were incurred.

With respect to the Landlord's claim for lost rent for the month of April 2017, I find there is insufficient evidence before me to conclude the parties agreed to continue the tenancy on a month-to-month basis. Rather, it appears more likely than not that the parties agreed to extend the fixed-term tenancy for a limited period.

Importantly, section 7 of the *Act* requires a party to take steps to mitigate, or minimize, their losses. While the Landlord testified that he posted an advertisement online, he did not confirm when this occurred and did not provide a copy with his evidence. Instead, he merely suggested the Tenant bore some responsibility for being unable to advertise the rental unit because he travelled to China. Having received notice on March 2, 2017,

of the Tenant's intention to vacate the rental unit, the Landlord ought to have taken steps, either personally or through an agent, to re-rent the unit. He did not. This aspect of the Landlord's claim is dismissed.

With respect to the Landlord's claim to recover \$300.00 for cleaning and repairs, I find there is insufficient evidence before me to conclude the Landlord is entitled to this amount. The Condition Inspection Report, signed by both parties, confirmed there was no damage in the rental unit. This aspect of the Landlord's Application is dismissed.

Policy Guideline #17 directs that an arbitrator must order the return of the security or pet damage deposit when a landlord's application to retain the security or pet damage deposit is dismissed. Accordingly, I order the Landlord to return the security deposit to the Tenant within 15 days after the date of this Decision. In support, and pursuant to section 67 of the *Act*, I grant the Tenant a monetary order in the amount of \$800.00.

### Conclusion

The Landlord's Application is dismissed.

The Tenant is granted a monetary order in the amount of \$800.00. The order may be filed in and enforced as an order of the Provincial Court of British Columbia (Small Claims).

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: September 12, 2017

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Residential Tenancy Branch