



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Dispute Codes:**

Tenant: MNSD, MNDC  
Landlord: MNSD, MNDC, MNR, MND, FF

### **Introduction**

This hearing was convened in response to cross-applications by the parties. The tenant filed on July 19, 2017 pursuant to the *Residential Tenancy Act* (the Act), and subsequently amended for Orders as follows:

1. An Order for return of security deposit - Section 38
2. A monetary Order for loss – Section 67

The landlord filed on August 01, 2017 for Orders as follows;

1. A monetary Order for damage / loss – Section 67
2. An Order to retain the security deposit – Section 38
3. A Monetary Order for unpaid utilities – Section 67
4. An Order to recover the filing fee for this application - Section 72.

The tenant, the landlord and the landlord's agent attended the hearing and were given an opportunity to discuss and settle their dispute, to no avail. The parties respectively acknowledged receiving all the evidence of the other. Despite that both parties submitted late evidence both parties stated they were able to understand and respond to it therefore I determined all evidence admissible. Only *relevant* evidence has been considered toward the outcome of this Decision. The parties were given opportunity to present *relevant* testimony, and make *relevant* submissions of evidence. Prior to concluding the hearing both parties acknowledged they had presented all of the *relevant* evidence that they wished to present.

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

Each party bears the burden of proving their respective claims.  
Is the landlord entitled to the monetary amounts claimed?

Is the tenant entitled to the monetary amounts claimed?

### **Background and Evidence**

The tenancy has ended. The undisputed evidence in this matter is as follows. The tenancy began in January 2008. The hearing had benefit of the written tenancy agreement. At the outset of the tenancy the landlord collected deposits totalling \$900.00, which the landlord retains in trust. The payable rent was in the amount of \$1535.00 due in advance on the first day of each month. The landlord claims they received the tenant's forwarding address solely as part of the tenant's application for dispute resolution.

The landlord had given the tenant a 2 Month Notice to End tenancy with an effective date of May 31, 2017. The tenancy then ended as a result of an Order of Possession issued the landlord dated June 13, 2017 effective 2 days from the day served on the tenant June 21, 2017. The tenant did not vacate the unit as ordered within the 2 days therefore the landlord sought a Writ of Possession from Supreme Court. The Bailiff acted on the Writ on July 18, 2017, removing the tenant's belongings into storage and providing the landlord with possession of the unit. In the process the Bailiffs broke a bedroom door. The parties agree that rent for June 2017 was satisfied in full and that the tenant has not received compensation for receiving a 2 Month Notice to End.

### **Tenant's application**

The tenant claims the deposits held by the landlord be returned. In addition the tenant claims they did not receive compensation pursuant to Section 51 of the Act for receiving the landlord's 2 Month Notice to End. The tenant further claims the landlord has not followed through on their reason for issuing the Notice to End, of *personally occupying the unit*, within a reasonable period after the effective date of the Notice of May 31, 2017. The tenant seeks compensation equivalent to 2 month's rent (\$3070.00) pursuant to Section 51(2) of the Act. The tenant also seeks compensation for a queen size bed, 100 digital discs, holiday decorations, personal video tapes, a leather jacket and a claimed collectible purportedly valued at \$500.00-\$600.00. In addition the tenant claims for general 'pain and suffering' for disregard to their belongings. The tenant claims that all of the claimed items were removed by the Bailiff and placed into storage. The tenant testified the Bailiffs notified them to retrieve their personal belongings from storage by a certain date and quoted the tenant a fee for the item's release. The tenant did not testify as for what the fee was, but regardless the tenant could not satisfy the required fee and therefore their items purportedly went to auction to satisfy the tenant's storage debt. It must be noted that the tenant was not clear in respect to their

belongings but none the less hold the landlord responsible because their belongings were confiscated as a result of the landlord's doing.

#### Landlord's application

The landlord claims unpaid utilities under the tenancy agreement in the amount of \$595.91. The landlord provided proof the tenant was responsible to satisfy half the cost for utilities. The landlord also claims the Supreme Court filing fee of \$120.00, and the resulting Bailiff costs of \$2149.43 for enforcement of the Order of Possession. The landlord also claims \$112.41 for a door broken by the Bailiffs, as well as for 3 broken doors and purportedly damaged flooring. The landlord claims that one door was broken by the Bailiffs and the other 2 doors were damaged beyond reasonable wear and tear. The landlord did not present evidence in respect to the condition or state of the flooring.

The landlord claims that the rental unit was left unclean and containing miscellaneous debris and castoffs of the tenant for which they hired a container in the amount of \$199.50. The landlord claims they consequently were charged \$167.00 as a municipal disposal fee. The landlord further claims for cleaning in the amount of \$400.00. The landlord provided receipts for all of their claims. Lastly, the landlord claims \$891.18 representing the tenant's over holding of the unit from July 01 – 18, 2017.

The landlord claims that following July 18, 2017 they personally attended to some remediation or renovation of the unit. Then the landlord went on vacation for 6 weeks. The landlord testified that to date the desired remediation remains incomplete with a view to completing work in the upcoming months before the landlord will then occupy the unit.

#### **Analysis**

*A copy of the Residential Tenancy Act, Regulations and other publications are available at [www.gov.bc.ca/landlordtenant](http://www.gov.bc.ca/landlordtenant).*

The onus is on the respective parties to prove their claim on balance of probabilities. On preponderance of all evidence submitted, and on balance of probabilities, I find as follows:

#### Tenant's claim

It must be known that a tenant's deposit(s) always belongs to the tenant and is solely retained in trust by the landlord for the duration of the tenancy until administered in accordance with the Act or determined by an Arbitrator. In this matter, unless the deposits totalling \$900.000 are offset by the landlord's claim they will be returned to the tenant with applicable interest.

Section 51 of the Act states as follows.

**Tenant's compensation: section 49 notice**

**51** (1) A tenant who receives a notice to end a tenancy under section 49 [*landlord's use of property*] is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement.

(1.1) A tenant referred to in subsection (1) may withhold the amount authorized from the last month's rent and, for the purposes of section 50 (2), that amount is deemed to have been paid to the landlord.

(1.2) If a tenant referred to in subsection (1) gives notice under section 50 before withholding the amount referred to in that subsection, the landlord must refund that amount.

(2) In addition to the amount payable under subsection (1), if

(a) steps have not been taken to accomplish the stated purpose for ending the tenancy under section 49 within a reasonable period after the effective date of the notice, or

(b) the rental unit is not used for that stated purpose for at least 6 months beginning within a reasonable period after the effective date of the notice,

the landlord, or the purchaser, as applicable under section 49, must pay the tenant an amount that is the equivalent of double the monthly rent payable under the tenancy agreement.

I find the tenant did not ultimately receive their entitled compensation pursuant to Section 51(1) of the Act for having been issued a 2 Month Notice to End. Therefore I grant the tenant compensation equivalent to one month's rent in the amount of **\$1535.00.**

I find that the tenant's belongings were removed by the Bailiff pursuant to a Supreme Court Order. The belongings were stored as required by the Act but the tenant failed to retrieve their belongings when notified to do so and as a result their belongings were auctioned to recover costs. As a result, I **dismiss** the portion of the tenant's claim for their belongings, without leave to reapply.

Ending a tenancy is a serious matter. I find that the Act operates to hold a landlord accountable for issuing a 2 Month Notice to End and following through on their good faith intention behind issuing the Notice. I find that Section 51(2) operates to obligate a landlord to compensate a tenant if they do not act on their stated purpose within a reasonable time frame after compelling a tenant to vacate their home. I find the Act does not operate to adjust or extend the landlord's *reasonable period* obligation if they choose to vacate after ousting a tenant.

I find that Section 51(2) effectively reads that if the landlord has not taken steps to move into the rental unit within a *reasonable period* after the effective date of the Notice to End then they must compensate the tenant in the prescribed amount. I find that the effective date of the Notice to End was May 31, 2017. Given the circumstances which then followed in this matter I find that a *reasonable period* to accomplish the stated purpose to be 6 months or by November 30, 2017. Even if the *reasonable period* obligation could somehow be extended by an additional 6 weeks to factor the landlord's vacation, the landlord would reasonably have been expected to move into the former rental unit, today, January 15, 2018, which is not the case. As a result, on reflection, I find the landlord is liable pursuant to **Section 51(2)** to compensate the tenant the equivalent of 2 month's rent under the tenancy agreement in the amount of **\$3070.00**.

While I accept the tenant has experienced a loss I find the landlord is not solely responsible for their loss. As a result, I decline to consider their claim for what they describe as pain and suffering, and this portion of their application is **dismissed**.

#### Landlord's claim

Under the *Act*, a party claiming a loss bears the burden of proof. Moreover, tenant must satisfy each component of the following test established by **Section 7** of the *Act*, which states;

#### ***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.*

The test established by Section 7 is as follows,

1. Proof the loss exists,
2. Proof the loss was the result, *solely, of the actions of the other party* in violation of the *Act* or Tenancy Agreement
3. Verification of the actual amount required to compensate for the claimed loss.
4. Proof the claimant (landlord) followed section 7(2) of the *Act* by taking *reasonable steps to mitigate or minimize the loss*.

Therefore, in this matter, the landlord bears the burden of establishing their claims on a balance of probabilities. The landlord must prove the existence of the loss, and that it stemmed directly from a violation of the tenancy agreement or a contravention of the *Act* on the part of the tenant. Once established, the landlord must then provide evidence that can verify the actual monetary amount of the loss. Finally, the landlord must show that reasonable steps were taken to address the situation to *mitigate or minimize* the loss incurred.

I find the landlord is owed compensation for the tenant *over holding* the rental unit from July 01 – 18, 2017 in the amount of **\$891.18**.

I am satisfied the landlord has provided sufficient evidence they are owed unpaid utilities in the amount of **\$595.91**.

I find that the landlord's claim for **\$2149.43** was to enforce the Order of an Arbitrator and the costs are therefore compensable in the claimed amount, as is also the landlord's court registration cost of **\$120.00**.

I am satisfied the landlord was required to clean the unit after the end of the tenancy, as well as to remove and dispose of the tenant's castoffs. As a result I grant the landlord their request for costs totalling **\$766.50** (\$199.50 + \$167.00 + \$400.00).

I find that the landlord has not provided evidence the tenant was directly responsible for 3 broken doors, nor provided evidence of a purportedly damaged floor. I am further not satisfied the tenant is responsible for a broken lockset given this was undertaken by the Bailiffs. As a result, I **dismiss** these portions of the landlord's claim without leave to reapply. As the landlord was in part successful in their application, they are entitled to recover their filing fee. The tenant's deposits and interest held in trust by the landlord are offset from the awards made herein.

#### Calculations

landlord's award sum	\$4523.02
filing fee – to landlord	\$100.00
landlord's total award	<b>\$4623.02</b>
<i>minus tenant's total award</i>	<i>-\$4605.00</i>
to landlord	<b>\$18.02</b>
<i>tenant's deposits and interest held in trust by landlord</i>	<i>-\$913.50</i>
to tenant	<b>(\$895.48)</b>

### **Conclusion**

The parties' respective applications, as compensable, have been granted.

**I Order** the landlord may retain \$18.02 from the tenant's deposits and interest of \$913.50, and return the balance of \$895.48 to the tenant, forthwith.

To perfect the Order;

**I grant** the tenant a **Monetary Order** under Section 67 of the Act in the amount of **\$895.48**. 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: January 16, 2018

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Residential Tenancy Branch