



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      O

### Introduction

This hearing was convened in response to an application by the tenant pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

- a monetary award for loss under the tenancy agreement pursuant to section 67 of the *Act*.

Only the tenant attended the hearing. The tenant was given a full opportunity to be heard, to present testimony, to make submissions and to call witnesses.

The tenant explained that she served the landlord on two separate occasions with her application for dispute resolution and evidentiary package. She said that both of these applications were sent by way of Canada Post Registered Mail, and both copies were returned to her. Copies of the returned Canada Post Registered Mail receipts, along with their tracking numbers were provided to the hearing as part of the tenant’s evidentiary package. These envelopes show that the tenant attempted to serve the landlord by way of Canada Post Registered Mail on July 31, 2017 and again on August 10, 2017. Pursuant to sections 88, 89 & 90 of the *Act*, the landlord is deemed served with the tenant’s application for dispute resolution on August 5, 2017 and August 15, 2017, five days after their respective postings.

### Issue(s) to be Decided

Can the tenant recover money paid to the landlord?

### Background and Evidence

Undisputed testimony provided to the hearing by the tenant explained that this tenancy was set to begin on June 20, 2017. On June 17, 2017, the landlord called the tenant and unexpectedly cancelled their tenancy agreement. A copy of the tenancy agreement, highlighting this cancellation was provided to the hearing as part of the tenant's evidentiary package. The tenant said she had written twelve post-dated cheques to the landlord. Following the cancellation of the tenancy agreement, the landlord returned eleven cheques to her and returned the \$1,600.00 security deposit. The tenant testified that the landlord told her that the first rent cheque had already been deposited, but the landlord assured the tenant that the money would immediately be returned to her.

The tenant said that on June 20, 2017 she received a text message from her bank alerting her to a suspicious deposit. The tenant investigated this alert and discovered that the landlord had cashed the cheque. The tenant explained that she attempted to contact the landlord several times but was unable to recover the funds paid for the first month's rent. A copy of the cashed cheque was provided to the hearing as part of the tenant's evidentiary package.

### Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. In this case, the onus is on the tenant to prove her entitlement to a monetary award.

Based on the undisputed testimony and the physical evidence produced for the hearing by the tenant, I find that the tenant has suffered a loss as a result of the landlord's contravention of the tenancy agreement. The parties contracted to enter a tenancy agreement. This agreement was cancelled at the last moment by the landlord and the landlord agreed to return all cheques associated with the tenancy agreement. The landlord failed to do this and despite no longer offering the rental unit to the tenant, cashed a cheque for the first month's rent. I find that the tenant has shown that she suffered a loss under section 67 of the *Act* and is entitled to a return of the first month's rent.

Conclusion

I issue a Monetary Order of \$3,200.00 in favour of the tenant as follows:

Item	Amount
Compensation Agreed Loss of first month`s rent	\$3,200.00
<b>Total =</b>	<b>\$3,200.00</b>

The tenant is provided with a Monetary Order in the above terms and the landlord must be served with this Order as soon as possible. Should the landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

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: February 5, 2018

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Residential Tenancy Branch