



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding AI KANG CAPITAL INC. C/O AWM-ALLIANCE REAL ESTATE GROUP LTD.  
and [tenant name suppressed to protect privacy]

## **DECISION**

### **Dispute Codes**

MNDC, MNSD, FF

### **Introduction**

This hearing was convened in response to an application by the tenant filed August 29, 2017 pursuant to the *Residential Tenancy Act* ("Act") for:

- return of their security deposit - Section 38;
- recover their filing fee for this application from the landlord - Section 72
- A monetary Order for loss – Section 67

Solely the representative of the tenant, their daughter, attended the conference call hearing. I accept the tenant's evidence that despite the landlord having been served with the application for dispute resolution and notice of hearing and the tenant's evidence by *registered mail* in accordance with Section 89 of the Act the landlord did not participate in the conference call hearing. The tenant provided proof of mail registration inclusive of the tracking number for the registered mail sent to the landlord on July 31, 2017 and received by the landlord September 01, 2017. Pursuant to Sections 89 and 90 of the Act I find that the landlord is deemed to have been served with the tenants' application and notice of hearing. The tenant was given opportunity to be heard, to present evidence and to make submissions.

### **Issues to be Decided**

Is the tenant entitled to the monetary amounts claimed?

### **Background and Evidence**

The relevant undisputed evidence is as follows. The tenancy began March 01, 1998

and ended July 31, 2017. The tenancy was guided by a written tenancy agreement of which I have benefit. The payable rent was \$1085.00 per month payable in advance on the 01st. of the month. At the outset of the tenancy the landlord collected a security deposit in the amount of \$375.00 which has since been returned and received by the tenant on August 31, 2017.

The tenant provided evidence they provided the landlord their forwarding address on June 30, 2017 within the tenant's Notice they were vacating therefore the landlord possessed the forwarding address on July 31, 2017.

The tenant testified that August 31, 2017 the landlord returned to the tenant the original amount of the deposit of \$375.00.

The tenant also seeks compensation for loss of use of the unit for the period of January 09 – February 02, 2017 during which time the landlord made necessary and pre-planned repairs and renovation of the tenant's bathroom due to water damage and of which the tenant had no access or use of the bathroom during the repairs. The tenant's representative testified the tenants, their parents, are elderly. As a result the tenants went to reside with the daughter until the bathroom once again became usable. The tenant claims that at the end of the renovations the rental unit was left covered in dust and debris from the month long work. The tenant claims the landlord was asked to clean the unit and further for compensation due to the loss of use of the rental unit. In addition, the tenant requested of the landlord that they repaint the entire unit during the tenant's absence due to the renovations as it had not been painted for the duration of the tenancy. To the tenant's requests the landlord provided the tenant compensation equivalent to half month's rent in the amount of \$542.50, and collaterally refused to repaint the unit. The tenant took it upon themselves to hire cleaners to clean the unit and also hired a painter to repaint all but the newly renovated bathroom of the unit. The tenant provided receipts for the cleaning and the repainting in the respective amounts of \$703.50 and \$1938.30.

### **Analysis**

*The full text of the Act, and other resources, can be accessed via the Residential Tenancy Branch website: [www.gov.bc.ca/landlordtenant](http://www.gov.bc.ca/landlordtenant).*

Section 38 of the *Act* requires the landlord to either return the tenants' deposits or file for dispute resolution for authorization to retain the deposit, within 15 days after the later of the end of a tenancy and the tenants' provision of a forwarding address in writing. I find the landlord failed to repay the security deposit or make an application for dispute

resolution within 15 days of receiving the tenant's forwarding address July 31, 2017. As a result, the Act prescribes that pursuant to Section 38(6) the landlord must pay the tenant *double* the amount of the original security deposit. The landlord held the security deposit in the amount of \$375.00 and I find that they were obligated under Section 38(6) to return *double* this amount, of which they solely returned \$375.00 and no accrued interest. Therefore, I award the tenant an additional **\$422.37** comprised of \$375.00, representing the doubling provision for the original security deposit already returned, and \$47.37 in accrued interest (the doubling provisions of Section 38 apply solely to the original deposit amount).

In respect to the balance of the tenant's monetary claim I find the tenant has provided sufficient evidence supporting that the rental unit was unclean following the repairs and renovation of the bathroom. As a result, I grant the tenant their claim for cleaning in the receipted amount of **\$703.50**.

I accept the tenant's claim respecting the loss of use of the rental unit once the bathroom became unusable. As a result I find the tenant is entitled to be compensated for the majority of January 2017 equivalent to 3 weeks in the amount of \$813.75 (\$1085.00 x .75) from which I deduct the landlord's compensation in the amount of \$542.50 with a resulting award of **\$271.25**.

I find that in the absence of agreement of the landlord to repaint the rental unit it was available to them to seek dispute resolution, but they did not. I have not been presented evidence that the painting was based or predicated on emergency repairs for which the tenant paid. As a result, I would normally be compelled to dismiss the tenant's claim for repainting in the amount of \$1938.30. However, I accept that because of the tenant's expenditure for painting the landlord received a fully repainted unit, and to this end they have been reasonably enriched, albeit not completely on their terms or at their cost. Therefore, I grant the tenant compensation in the set amount of **\$484.57** for repainting (\$1938.30 x .25).

As the tenant was successful in their application I further grant the tenant their filing fee of \$100.00 for a sum award of **\$1981.69**, *without leave to reapply*.

### **Conclusion**

**I issue a Monetary Order** under Section 67 of the Act in the tenants' favour in the amount of **\$1981.69**. 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.

The tenant's application, as is relevant has been granted.

**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: March 06, 2018

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Residential Tenancy Branch