



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Dispute Codes**

MND; MNDC; MNSD; FF

### **Introduction**

This is the Landlord's Application for Dispute Resolution made September 12, 2017, seeking a monetary award for damages; compensation for damage or loss under the Act, regulation or tenancy agreement; to apply the security deposit towards her monetary award; and to recover the cost of the filing fee from the Tenant.

Both of the parties attended and gave affirmed testimony at the Hearing which took place by teleconference. The hearing process was explained and the parties were given an opportunity to ask questions about the process.

The Landlord testified that she mailed the Notice of Hearing documents to the Tenant, by registered mail. The Landlord provided a copy of the tracking information for the registered documents, which confirms that the Tenant signed for the documents on September 25, 2017. The Landlord testified that she also served the Tenant with additional documentary evidence on February 7, 2018. The Tenant acknowledged receipt of these documents.

The Tenant testified that he served the Landlord with his documentary evidence, which included 3 photographs, on April 3, 2018. The Landlord acknowledged receipt of the Tenant's documents with the exception of one of the photographs, a picture of a door.

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

1. Is the Landlord entitled to a monetary award for damages to the rental unit and compensation for loss of revenue?
2. May the Landlord apply the security deposit towards her monetary award?

### **Background and Evidence**

This tenancy began on April 1, 2017, and ended on August 15, 2017. Monthly rent was \$1,450.00, due on the first day of each month. The Tenant paid a security deposit in the amount of \$725.00.

The Landlord did not complete a Condition Inspection Report with the Tenant at the beginning or the end of the tenancy.

The Tenant stated that he had provided the Landlord with his forwarding address at the end of the tenancy, but did not have proof that she received it. The Tenant provided the Landlord with his forwarding address in writing on December 22, 2017, by registered mail.

#### **The Landlord gave the following testimony:**

The Landlord's Application provides that she is claiming a total of \$3,150.00. The Landlord provided a Monetary Order Worksheet dated February 6, 2018, seeking a total of \$3,332.02, as follows:

Receipt or estimate from	For	Amount
Handyman	"Repairs due to tenant"	\$723.88
Handyman	"Estimate to repair remainder of damages"	\$1,820.00
Supplies	paint and showerhead	\$42.14
On-line advertising	cost to advertise rental unit	\$21.00
Loss of revenue	August 15 – 31, 2017	\$725.00
TOTAL		\$3,332.02

The Landlord testified that the Tenant damaged a door by knocking a hole into it, which could not be repaired. The Landlord stated that she had to replace the door, which was not a "standard" door due to its age, and therefore had to be custom-made. The Landlord testified that the house was built in 1947 and that she purchased the house in 2009. She stated that the door was there when she purchased the house.

She testified that the Tenant put "25 screw holes in a wall", which required repairs and repainting. The Landlord stated that the rental unit had been painted "3 years ago".

The Landlord stated that the showerhead was broken by the Tenant and had to be replaced.

The Landlord provided a copy of the tenancy agreement. The tenancy agreement is an 18 month lease, ending on October 1, 2018. She stated that the Tenant moved out of the rental unit in the middle of the month of August, 2017, without providing due notice. She stated that the Tenant paid only ½ of the rent (\$725.00) for August. The Landlord stated that she could not re-rent the rental unit until September 1, 2017, and therefore she seeks \$725.00 for loss of revenue.

In support of her claim, the Landlord provided photographs, copies of invoices, receipts and estimates, and written statements of witnesses.

The Tenant gave the following testimony:

The Tenant questioned the validity of the Handyman's invoice and estimate. He stated that he believed the Handyman was the Landlord's friend and referred to "1% GST" being charged on the invoice. The Tenant acknowledged damaging the door when he was moving furniture. He stated that he repaired the hole and put a base coat of paint on the repaired area. The Tenant stated that he did not have time to paint the door, but that it was repaired, needed only a "top coat", and did not have to be replaced.

The Tenant stated that he put up a shelf to cover existing holes in the wall. He stated that he works in construction and that he knows "how to hang things". The Tenant submitted that the Landlord's photographs were taken "up close" and were therefore exaggerated.

The Tenant testified that there were "undisclosed problems" with the rental unit, including moisture problems and a loud sump pump. He stated that when he spoke to the Landlord about the sump pump not keeping up with the water ingress, the Landlord told him it was not her problem. The Tenant stated that the Landlord asked the Tenant to move out and agreed that he could move on August 15, 2017.

Tenant testified that the Landlord was showing the rental unit to prospective tenants in late July and August, 2017. The Tenant testified that there were new occupants "three days later" after he moved out. He submitted that the ads on the on-line site are fee and that the statement provided by the Landlord does not indicate what the \$21.00 charge was for.

The Tenant provided photographs, copies of text messages, and written submissions.

### **Analysis**

I explained to the parties that I would apply only a maximum of \$3,150.00 when considering the Landlord's monetary claim, because that is the amount that was claimed on her Application for Dispute Resolution. The Landlord did not amend her Application to increase her claim to \$3,332.02.

Section 67 of the Act provides:

#### **Director's orders: compensation for damage or loss**

**67** Without limiting the general authority in section 62 (3) [*director's authority respecting dispute resolution proceedings*], 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.

Section 7 of the Act provides:

#### **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.

This is the Landlord's Application and therefore the onus is on the Landlord to provide sufficient evidence, on the balance of probability, that:

1. The Landlord suffered a loss as a result of the Tenant's non-compliance with the Act, regulation or tenancy agreement;
2. The amount required to compensate the Landlord for the Tenant's breach; and
3. The Landlord took all reasonable steps to mitigate or minimize her loss.

Policy Guideline 40 provides, in part:

“When applied to damage(s) caused by a tenant, the tenant’s guests or the tenant’s pets, the arbitrator may consider the useful life of a building element and the age of the item. Landlords should provide evidence showing the age of the item at the time of replacement and the cost of the replacement building item. That evidence may be in the form of work orders, invoices or other documentary evidence.

If the arbitrator finds that a landlord makes repairs to a rental unit due to damage caused by the tenant, the arbitrator may consider the age of the item at the time of replacement and the useful life of the item when calculating the tenant’s responsibility for the cost or replacement.”

The regulations provide that a Condition Inspection Report completed in accordance with the Part 3 of the regulations is evidence of the state of repair and condition of the rental unit or residential property on the date of the inspection, unless either the landlord or the tenant has a preponderance of evidence to the contrary. In this case, the Landlord did not complete a Condition Inspection Report at the beginning or the end of the tenancy and I find that there is insufficient evidence that the Tenant caused damage to the wall or the shower head.

The Tenant acknowledged damaging the door, but stated that he repaired the door and that it only required a coat of paint. The Tenant provided a photograph of the repaired door; however, I could not consider the photograph because, although the Landlord received the remainder of the Tenant’s documentary evidence, she claimed that she did not receive the photograph of the repaired door. The Landlord stated that the door could not be repaired; however, I find that the Landlord did not provide sufficient evidence that the door required replacement. Even if I had found that the door was damaged beyond repair (which I do not), Policy Guideline 40 provides that the useful life of a door is 20 years. The Landlord was not certain of the age of the damaged door, but stated that the house was built in 1947 and that the door was there when she purchased the house approximately 9 years ago. Therefore, the door was at the very least nearing half of its useful life and the Landlord would not be entitled to the full cost of replacement. In addition, the handyman’s invoice dated September 1, 2017, does not breakdown what portion of the \$590.00 cost for materials was for the cost of replacing the door.

Likewise, I find that the Landlord provided insufficient evidence that the Tenant damaged the walls or broke the shower head.

The Tenant and the Landlord both provided copies of text messages between the parties. I find that it was customary for the parties to communicate through text messages. The Tenant's copies of text messages include the following communications:

Date/Time	To:	From:	Text
Jun 4/17 8:46 p.m.	JN	TR	"Does your offer let us out of the lease still stand?"
Jun 4/17 8:49 p.m.	TR	JN	"Yes. When would you be looking to leave?"
Jul 23/17 6:38 p.m.	JN	TR	"Please let me know what you think as we've found a place for august 1 <sup>st</sup> ☺"
Jul 24/17 1:44 p.m.	JN	TR	"Hey [JN], so to get things going could you accept an email for my notice and the suite can get online etc?"
Jul 24/17	TR	JN	"Hi [TN] yes but there's no way I can have it ready for the 1 <sup>st</sup> . You did not give me enough notice. 1 month is the minimum that's required so <b>I'm being very flexible by allowing the 15<sup>th</sup>. Please e transfer me half a months rent and we'll get everything started</b> " [My emphasis added]

I accept the Tenant's undisputed testimony that the parties agreed to end the tenancy early because of a moisture issue in the rental unit. I find, based on the evidence provided, that the Landlord and the Tenant had a mutual agreement to end the tenancy on August 15, 2017, and that the Tenant would pay ½ a month's rent only (\$725.00) for August 1 – 15, 2017. Therefore, I find that the Landlord is not entitled to loss of revenue for August 15 to 31, 2017.

The parties agreed that the tenancy would end on August 15, 2017, and I find that the Landlord is not entitled to the cost, if any, of advertising the rental unit for rent.

The Landlord has been totally unsuccessful in her Application and I find that she is not entitled to recover the cost of the filing fee from the Tenant.

During the Hearing, the Tenant asked whether he was entitled to compensation under Section 38(6) of the Act. Section 38(6) of the Act provides that if a tenant does not agree in writing that his landlord may keep some or all of the security deposit for damages, the landlord **MUST** return the security deposit to the tenant or make an application against the security deposit within 15 days of the end of the tenancy or the

date that the landlord receives a tenant's forwarding address in writing (whichever date is the latter). If the landlord does not return the deposit or make a claim within that 15 day period, the landlord **MUST** pay double the amount of the security deposit to the tenant.

In this case, the Landlord made her Application on September 12, 2017, and served the Tenant on September 25, 2017, by registered mail **at his forwarding address**; however, I find that the Tenant provided insufficient evidence that he gave her his forwarding address on August 15, 2017, and that therefore the Landlord did not make her Application against the security deposit within 15 days of receipt of the Tenant's forwarding address. Therefore, I find that Section 38(6) of the Act does not apply and I decline to order that the Landlord pay double the amount of the security deposit to the Tenant.

The Landlord is not entitled to retain any of the security deposit under Sections 38 or 67 of the Act and I HEREBY ORDER the Landlord to return the security deposit in the amount of \$725.00 to the Tenant forthwith.

### **Conclusion**

The Landlord's Application is dismissed in its entirety, without leave to reapply.

The Tenant is hereby provided with a Monetary Order in the amount of **\$725.00** for service upon the Landlord, representing return of the security deposit. This Order may be enforced in the Provincial Court of British Columbia.

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: April 24, 2018

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Residential Tenancy Branch