



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes**      CNC FFT LRE MNDCT MNSD

### **Introduction**

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 47;
- for authorization to obtain a return of all or a portion of his security deposit pursuant to section 38;
- a monetary order for compensation for loss or other money owed under the *Act*, regulation or tenancy agreement pursuant to section 67;
- an order to suspend or set conditions on the landlord's right to enter the rental unit pursuant to section 70; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72 of the *Act*.

KK ("landlord") appeared as the primary agent on behalf of the landlord in this hearing, and had full authority to do so. Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

The landlord confirmed receipt of the tenant's dispute resolution application ('Application'). In accordance with section 89 of the *Act*, I find that the landlord was duly served with the Application. All parties confirmed receipt of each other's evidentiary materials

At the beginning of the hearing the tenant indicated that he had moved out on May 31, 2018 as per the 1 Month Notice issued to him on April 24, 2018 by the landlord. As this tenancy has now come to an end, the tenant's application to cancel the 1 Month Notice and to suspend or set conditions on the landlord's access was withdrawn by the tenant.

### **Issues**

Is the tenant entitled to a monetary order for compensation for loss or money owed under the *Act*, regulation or tenancy agreement?

Is the tenant entitled to return of his security deposit?

Is the tenant entitled to recover the cost of the filing fee from the landlord for this application?

### **Background and Evidence**

While I have turned my mind to all the documentary evidence properly before me and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of this application and my findings around it are set out below.

This 1 year fixed-term tenancy began on September 1, 2017, and ended on May 31, 2018. Monthly rent was set at \$1,235.00, payable on the first of the month. The tenant paid a \$617.50 security deposit at the beginning of this tenancy, and the landlord returned \$112.50 to the tenant at the end of the tenancy and withheld the rest. Both parties confirmed in the hearing that the tenant provided his forwarding address on May 31, 2018. Both parties confirmed that the tenant never gave permission for the landlord to retain any portion of his security deposit. The landlord filed their own application on June 10, 2018 to retain the deposit, and the hearing is scheduled for a future date.

The tenant is making a monetary claim in the amount of \$1,219.45 as set out in the table below.

<b>Item</b>	<b>Amount</b>
Loss of Quiet Enjoyment	\$500.00
Moving Costs	114.45
Filing Fee	100.00
Return of Security Deposit the landlord still holds	505.00
<b>Total Monetary Order Requested</b>	<b>\$1,219.45</b>

This tenancy ended on May 31, 2018 after the tenant was served a 1 Month Notice on April 24, 2018 related to alleged smoking of marijuana on the premises. The tenant filed this application to dispute the 1 Month Notice, but moved out as he felt harassed by the landlord.

The tenant is seeking compensation for loss of quiet enjoyment and for his moving costs as he felt subjected to “borderline harassment” by the landlord and landlord’s agents. The tenant

testified that he was “painted and labelled” by the landlord despite the fact that he stopped smoking after being warned on March 16, 2018.

The tenant called a witness to confirm that he stopped smoking after March 16, 2018, but the landlord continued to target him despite other occupants smoking on the property.

The landlord’s agent testified that the service of the warning letters and 1 Month Notice were not personal, and that the landlord was simply responding to the numerous complaints by other tenants and occupants. The landlord called a witness to confirm that she had left a note on the tenant’s car for parking in an area not designated for parking that exceeded 15 minutes.

### **Analysis**

Under the *Act*, a party claiming a loss bears the burden of proof. In this matter the tenant must satisfy each component of the following test for loss 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 (the landlord)* 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 (tenant) followed section 7(2) of the *Act* by taking *reasonable steps to mitigate or minimize the loss*.

Therefore, in this matter, the tenant bears the burden of establishing their claim on the balance of probabilities. The tenant 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 other party. Once established, the tenant must then provide evidence that can verify the actual

monetary amount of the loss. Finally, the tenant must show that reasonable steps were taken to address the situation to *mitigate or minimize* the loss incurred.

### **Protection of tenant's right to quiet enjoyment**

**28** A tenant is entitled to quiet enjoyment including, but not limited to, rights to the following...

(b) freedom from unreasonable disturbance;...

(d) use of common areas for reasonable and lawful purposes, free from significant interference.

I have considered the testimony of both parties, and while the tenant felt that the landlord's behavior towards him made him feel like he was "walking on eggshells", I find that that landlord has complied with the *Act* in the issuance of the 1 Month Notice to End Tenancy, and the landlord has a duty to address issues that may compromise the right to quiet enjoyment for all occupants of the building. I find that the landlord's actions are due to their obligations to fulfill section 28 of the *Act* rather than their contravention of it. Furthermore section 47(4) of the *Act* provides that upon receipt of a notice to end tenancy for cause the tenant may, within ten days, dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch. I find that the tenant had filed his application for dispute resolution within the ten days of service granted under section 47(4) of the *Act*, but moved out on the effective date of the 1 Month Notice before a hearing was held regarding the 1 Month Notice. Accordingly, I find that the tenant is presumed to have accepted that the tenancy ended on the effective date of the 1 Month Notice. Accordingly, the tenant's monetary claims for loss of quiet enjoyment as well as moving costs are dismissed without leave to reapply.

Section 38(1) of the *Act* requires a landlord, within 15 days of the end of the tenancy or the date on which the landlord receives the tenant's forwarding address in writing, to either return the deposit or file an Application for Dispute Resolution seeking an Order allowing the landlord to retain the deposit. If the landlord fails to comply with section 38(1), then the landlord may not make a claim against the deposit, and the landlord must return the tenant's security deposit plus applicable interest and must pay the tenants a monetary award equivalent to the original value of the security deposit (section 38(6) of the *Act*). With respect to the return of the security deposit, the triggering event is the latter of the end of the tenancy or the tenant's provision of the forwarding address. Section 38(4)(a) of the *Act* also allows a landlord to retain an amount from a security or pet damage deposit if "at the end of a tenancy, the tenants agree in writing the landlord may retain the amount to pay a liability or obligation of the tenants."

In this case, I find that the landlord filed their application on June 10, 2018, within 15 days of receipt of the tenant's forwarding address in writing, which was on May 31, 2018. As the landlord complied with section 38 of the *Act* by filing for dispute resolution to retain this deposit,

and this matter is scheduled for a hearing at a later date, this portion of the tenant's application is dismissed with leave to reapply.

The filing fee is a discretionary award issued by an Arbitrator usually after a hearing is held and the applicant is successful on the merits of the application. As the tenant was not successful in her application, the tenant must bear the cost of this filing fee.

### **Conclusion**

The tenant withdrew his application to cancel the 1 Month Notice and to suspend or set conditions on the landlord's access to the rental unit as he moved out on May 31, 2018, and the tenancy had ended.

I dismiss the tenant's application for the return of their security deposit with leave to reapply.

I dismiss the remaining portion of their application without leave to reapply.

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: June 22, 2018

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Residential Tenancy Branch