



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding VERNON & DIST. COMMUNITY LAND TRUST  
SOCIETY and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      FFT MNDCT MNSD

### Introduction

This hearing was convened by way of conference call concerning an application made by the named tenant, seeking a monetary order for return of all or part of the pet damage deposit or security deposit; a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; and to recover the filing fee from the landlord for the cost of the application.

The applicant is the estate of a deceased tenant, and was represented at the hearing as an agent for the tenant who gave affirmed testimony. The tenant's agent also called one witness who gave independent affirmed testimony, having been removed from ear-shot of the hearing until time to testify. An agent for the landlord also attended and gave affirmed testimony. The parties were given the opportunity to question each other and the witness and give submissions.

No issues with respect to service or delivery of documents or evidence were raised, all of which has been reviewed and is considered in this Decision.

### Issue(s) to be Decided

- Has the applicant established a monetary claim as against the landlord for return of all or part or double the amount of the security deposit?
- Has the applicant established a monetary claim as against the landlord for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and more specifically for recovery of costs of photographs and other incidentals with respect to preparing for this hearing?

### Background and Evidence

**The tenant's agent** is a sibling of the deceased tenant and testified that she has received consent from other family members to deal with the estate of the tenant, and that no Grant of Probate or Administration is required.

The tenant's agent referred to evidence provided by the landlord, including a tenancy agreement specifying that this month-to-month tenancy began on August 1, 2014, and testified that the tenant passed away during the tenancy on or about February 11, 2017. The tenancy agreement specifies rent in the amount of \$403.00 per month payable on the 1<sup>st</sup> day of each month, and was raised to \$425.00 per month effective June 1, 2016. However the tenant's agent testified that adjustments were made by the landlord. At the outset of the tenancy the landlord collected a security deposit from the tenant in the amount of \$201.50, also adjusted by the landlord from \$225.00. The rental unit is a bachelor apartment.

The tenant's agent further testified that on February 28, 2017 the keys were returned to a person at the front desk of the landlord's office. The same person conducted a move-out condition inspection but said she had no authority to "sign off on it," so asked the tenant's agent for contact information and wrote the mailing address and phone number of the tenant's agent in a book. On March 20, 2017 the tenant's agent returned and the landlord's agent asked that the tenant's agent sign the move-out condition inspection report, but the tenant's agent refused because the landlord's agent would not allow her to take photographs. The tenant's agent marked the report as disagreeing with it.

The landlord has not returned any portion of the security deposit to the tenant's agent or any family member of the tenant, nor, to the best of her knowledge has anyone in the tenant's family agreed that the landlord retain any portion of it, nor has anyone been served with an Application for Dispute Resolution from the landlord.

The tenant claims double the amount of the security deposit, recovery of the \$100.00 filing fee and recovery of costs associated with providing and serving photographs and other evidence for this hearing.

**The tenant's witness** is another sibling of the tenant and testified that on February 28, 2017 the witness was present when the keys were returned to a person at the landlord's front desk, and witnessed that person write on blank paper the address of the tenant's agent, who is her sister. The person at the landlord's front desk also completed a walk-

through of the rental unit that day and said the apartment looked good, but didn't have the authority to sign off on the move-out inspection.

The landlord's agent later told the tenant's agent and the witness that they weren't getting any of the security deposit back because the landlord's agent had to clean and paint the apartment.

To the best of her knowledge, none of the witness' family has agreed in writing that the landlord retain any portion of the security deposit.

**The landlord's agent** testified that the security deposit amount was \$201.50 which was paid at the beginning of the tenancy. By the end of the tenancy, rent was payable in the amount of \$349.00 and the remainder was subsidized by BC Housing.

Another agent of the landlord attended on February 28, 2017 at the rental unit and completed a move-out condition inspection report, and a copy has been provided for this hearing, which is not signed by either party at move-out, and does not contain a date of the move-out inspection. However, that person was acting for the landlord's agent, who wasn't available to complete the move-out condition inspection. The landlord has provided evidence of time and repairs required to clean and make the apartment re-rentable, such as photographs which the landlord's agent testified were taken on March 1, 2017 when the landlord's agent followed up.

On March 20, 2017 the tenant's agent returned to retrieve mail for the tenant and the landlord's agent asked her to sign the report, but she refused and marked the report that she disagreed with it. The landlord's agent did not allow the tenant's agent to take any photographs because repairs were already started by then. The landlord's agent received the forwarding address of the tenant's agent that day.

The landlord has not made an Application for Dispute Resolution and testified that when a person moves out and leaves an apartment in disarray, the landlord is not required to return the security deposit.

### Analysis

In this case, the parties agree that after all adjustments the landlord collected a security deposit from the tenant in the amount of \$201.50 at the commencement of the tenancy.

The *Residential Tenancy Act*, and the tenancy agreement, both specify that a landlord must return a security deposit to a tenant in full within 15 days of the later of the date

the tenancy ends or the date the landlord receives the tenant's forwarding address in writing, or must make an Application for Dispute Resolution claiming against the security deposit within that 15 day period, unless the tenant otherwise agrees in writing. If the landlord fails to do either, the landlord must repay the tenant double the amount.

In this case, the tenant's agent and the tenant's witness both testified that the forwarding address of the tenant's agent was left with a representative of the landlord at the landlord's place of business on February 28, 2017. The landlord's agent testified that she received the forwarding address on March 20, 2017. In the absence of any actual evidence, I find that the landlord received it on March 20, 2017, and I find that the tenancy ended on February 28, 2017. The landlord has not returned any portion of the security deposit and has not made an Application for Dispute Resolution, and 15 days have long since passed. No one representing the tenant agreed in writing that the landlord retain any portion, and I find that the landlord must repay double the amount, or \$403.00.

The *Residential Tenancy Act* does not provide for recovery of costs of service or costs incurred for preparing for a hearing, however since the tenant has been successful with the application the tenant is also entitled to recovery of the \$100.00 filing fee.

### Conclusion

For the reasons set out above, I hereby grant a monetary order in favour of the tenant as against the landlord pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$503.00.

This order is final and binding and may be enforced.

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 21, 2019

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Residential Tenancy Branch