



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding MAINSTREET EQUITY CORP.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNDCL-S, MNRL-S, FFL

### Introduction

This hearing was convened as a result of the Landlord's Application for Dispute Resolution, made on December 31, 2018 (the "Application"). The Landlord applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- a monetary order for unpaid rent;
- an a monetary order for compensation;
- an order to retain the security deposit; and
- an order granting recovery of the filing fee.

The hearing was scheduled for 1:30pm on April 25, 2019 as a teleconference hearing. B.T appeared on behalf of the Landlord and provided affirmed testimony. No one appeared on behalf of the Tenant. The Landlord submitted evidence that the estate of the Tenant is being administered by the Public Guardian and Trustee of British Columbia (the "Public Guardian"). The conference call line remained open and was monitored for 17 minutes before the call ended. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. During the hearing, I also confirmed from the online teleconference system that B.T. and I were the only persons who had called into this teleconference.

B.T. testified the Application and documentary evidence package was served to the Public Guardian representing the Tenant's Estate by registered mail. A Copy of the Canada Post registered mail receipt was submitted confirming the mailings took place on January 4, 2019. Based on the oral and written submissions of the Landlord and their Agent, and in accordance with sections 89 and 90 of the *Act*, I find that the Tenant's Estate is deemed to have been served with the Application and documentary

evidence on January 9, 2019, the fifth day after the registered mailing. The Tenant's Estate did not submit documentary evidence in response to the Application.

B.T. was given an opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

#### Issue(s) to be Decided

1. Should the Landlord receive a Monetary Order for unpaid rent, in accordance with Section 67 of the Act?
2. Should the Landlord receive a Monetary Order for compensation, in accordance with Section 67 of the Act?
3. Should the Landlord be authorized to apply the security deposit to the monetary claim, in accordance with Section 72 of the Act?
4. Should the Landlord be compensated for the cost of the filing fee, in accordance with Section 72 of the Act?

#### Background and Evidence

B.T. testified that the tenancy began on July 24, 1971. By the end of the tenancy, rent in the amount of \$838.58 was due to the Landlord each month. The Tenant paid a security deposit in the amount of \$10.00 as well as a remote deposit in the amount of \$35.00, which the Landlord continues to hold. B.T. testified that the tenancy ended on December 19, 2018 after the Landlord received the Tenant's keys from the Public Guardian representing the Estate. Neither party provided a copy of the tenancy agreement.

B.T testified that he received notice from the Public Guardian of the Tenant's Estate on November 22, 2019 that the Tenant had passed away on August 31, 2018. The Notice also indicated that the Estate wished to end the Tenant's tenancy on December 31, 2018.

B.T testified that rent had not been paid when due for November 2018 as well as December 2018. B.T stated that the Tenant's Estate returned the Tenant's keys to the Landlord on December 19, 2019; therefore, the Landlord is only seeking a pro-rated amount of \$486.92 for December 2018 rent bringing the Landlord's claim for unpaid rent to \$1,325.50.

B.T. stated that the Landlord is also seeking compensation in the amount of \$100.00 relating to late rent payment fees as well as parking fees for November and December 2018.

B.T stated that the Landlord is seeking the return of the \$100.00 filing fee paid for the Application as well as an order to retain the Tenant's security and remote deposits.

### Analysis

Based on the uncontested affirmed oral testimony and documentary evidence, and on a balance of probabilities, I find:

Section 67 of the *Act* empowers me to order one party to pay compensation to the other if loss results from a party not complying with the *Act*, regulations or a tenancy agreement.

Section 26 of the Act explains that the Tenant must pay rent when it is due under the Tenancy Agreement, whether or not the Landlord complies with this Act, the Regulations or the Tenancy Agreement, unless the Tenant has a right under this Act to deduct all or a portion of the rent. As I do not have any evidence before me that the Tenant had a right under this Act to deduct any of their rent, I find that the Tenant is in breach of Section 26 of the Act.

Section 45(1) of the Act authorizes a Tenant to end a periodic tenancy by giving the Landlord notice to end the tenancy effective on a date that is not earlier than one month after the date the Landlord receives the notice and is the day before the day in the month that rent is payable under the tenancy agreement.

In this case, B.T. testified and provided documentary evidence to support that the Tenant's Estate provided the Landlord with written notice to end the tenancy on November 22, 2018 with an effective vacancy date of December 31, 2018.

B.T. testified that rent for November and December 2018 was not paid to the Landlord. B.T. stated that the Landlord received the Tenant's keys from the Tenant's Estate on

December 19, 2018. The Landlord is seeking \$838.58 for unpaid rent for November 2018 and a pro-rated amount of \$486.92 for December 2018. I find the Landlord has established an entitlement to a monetary award for unpaid rent in the amount of \$1,325.50.

B.T. has also stated that the Landlord is seeking compensation for late fees and parking fees for November and December 2018, in the amount of \$100.00. B.T. testified that these fees were stipulated in the tenancy agreement.

I find the Landlord has established an entitlement to a monetary award for unpaid rent in the amount of \$1,325.50. Furthermore, I find the Landlord has established an entitlement to compensation in the amount of \$100.00 in relation to unpaid late fees and parking fees. Having been successful, I also find the Landlord is entitled to recover the \$100.00 filing fee paid to make the Application.

I find it appropriate in the circumstances to order that the Landlord is entitled to retain the security deposit held in partial satisfaction of the claim. B.T testified that the Tenant paid a \$10 security deposit at the start of his tenancy. After applying the accrued interest, I find the amount to be \$48.96. Furthermore, the Landlord continues to retain a deposit for a remote in the amount of \$35.00. I find that the Landlord is entitled to retain \$83.96 in partially satisfaction of the claim.

Pursuant to section 67 of the Act, I find the Landlord is entitled to a monetary order in the amount of \$1,440.54, which has been calculated as follows:

<b>Claim</b>	<b>Amount</b>
Unpaid rent:	\$1,325.50
Parking/late fees	\$100.00
Filing fee:	\$100.00
<i>LESS</i> security deposit + interest:	-( \$83.96)
<b>TOTAL:</b>	<b>\$1,440.54</b>

### Conclusion

I find that the Tenant has breached the Act by not paying rent when due to the Landlord. The Landlord is granted a monetary order in the amount of \$1,440.54. This order must be served to the Tenant's Estate as soon as possible. If the Tenant's Estate fails to comply the monetary order it may be filed in and enforced as an order of the Provincial Court of British Columbia (Small Claims).

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 29, 2019

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Residential Tenancy Branch