



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      FFT, MNDCT, MNRT, MNSD, MNCL, FFL

The Application for Dispute Resolution filed by the Tenant makes the following claims:

- a. A monetary order in the sum of \$10,800
- b. An order that the tenant recover the cost of the filing fee

The Application for Dispute Resolution filed by the landlord makes the following claims:

- a. A monetary order in the sum of \$333.59 for damages
- b. An order to retain the security deposit
- c. An order to recover the cost of the filing fee

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present. The parties acknowledged they had received the documents of the other party.

I find that the Application for Dispute Resolution and Notice of Dispute Resolution Hearing filed by the Tenant was personally served on the agent for the landlord on April 17, 2019. I find that the Application for Dispute Resolution and the Notice of Dispute Resolution Hearing filed by the Tenant was served on the landlord by mailing, by registered mail to where the landlord carries on business to April 17, 2019. I find that the Application for Dispute Resolution and the Notice of Dispute Resolution Hearing filed by the landlord was served on the Tenant by mailing, by registered mail to the address for service on May 4, 2019.

### Issue(s) to be Decided:

The issues to be decided are as follows:

- a. Whether the tenant is entitled to a monetary order and if so how much?

- b. Whether the tenant is entitled to recover the cost of the filing fee?
- c. Whether the landlord is entitled to A Monetary Order and if so how much?
- d. Whether the landlord is entitled to retain all or a portion of the security deposit/pet deposit?
- e. Whether the landlord is entitled to recover the cost of the filing fee?

Background and Evidence:

The parties entered into a written tenancy agreement that provided that the tenancy would start on November 1, 2018 and end on October 31, 2019. The rent is \$2400 per month payable on the first day of each month. The tenant paid a security deposit of \$1000 and a pet damage deposit of \$400 on October 31, 2019.

The tenant gave notice that she was vacating the rental unit prior to the end of the fixed term. The landlord accepted the early notice. The tenancy ended on March 7, 2019. The landlord found a new tenant who moved in a couple of days later.

There is a dispute between the parties as to when the tenant gave the landlord proper notice of her forwarding address. The tenant gave the forwarding address in the form of a text message to the representative of the landlord who assisted in the move out inspection on March 15, 2019. That representative told the tenant she should give the forwarding address directly to the landlord. The landlord testified that while she was in e-mail contact with the tenant the tenant failed to provide her with her forwarding address until she received the Application for Dispute Resolution at the end of April. She further submits that the notice of the forwarding address does not comply with the service requirements of Residential Tenancy Act.

The landlord returned \$1308.90 of the security deposit/pet deposit on April 26, 2019 in the form of an e-mail transfer to the tenants account.

Policy Guideline #16 includes the following:

**C. COMPENSATION**

The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. In order to determine whether compensation is due, the arbitrator may determine whether:

- a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;

- loss or damage has resulted from this non-compliance;
- the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
- the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

...

An arbitrator may award monetary compensation only as permitted by the Act or the common law. In situations where there has been damage or loss with respect to property, money or services, the value of the damage or loss is established by the evidence provided.

Tenant's Application:

With respect to each of the Tenant's claims I find as follows:

- a. I dismissed the Tenant's claim of The Application for Dispute claims the sum of \$7500 for undue financial hardship. She testified that because of the failure of the landlord to return the security deposit in a timely fashion she was not able to find another rental unit in the area. As result she had to put goods in storage and leave the area. She ended up moving to Vancouver then back to Ontario and she had to hire some to drive her vehicle back to Ontario. She had difficulty finding another job. The failure to put the security deposit put her credit rating into jeopardy.

I determined the tenant failed to prove these claims for the following reasons. Firstly, she failed to provide evidence in the form of receipts, documents etc. of these alleged losses. Secondly, she failed to prove these losses were caused by the failure to return the deposit in a timely basis. Finally, for the reasons set out below I determined the tenant failed to prove she was entitled to the security deposit at an earlier time than was provided by the landlord.

- b. I dismissed the tenant's claim of \$500 for the cost of emergency repairs. The tenant failed to provide sufficient evidence of emergency repairs or out of pocket expenses. At the hearing the tenant stated she was withdrawing this claim.
- c. The tenant claim for the return of double the security deposit. The Residential Tenancy Act provides that a landlord must return the security deposit plus interest to the tenants within 15 days of the later of the date the tenancy ends or the date the landlord receives the tenants forwarding address in writing unless

the parties have agreed in writing that the landlord can retain the security deposit, the landlord already has a monetary order against the tenants or the landlord files an Application for Dispute Resolution within that 15 day period. It further provides that if the landlord fails to do this the tenant is entitled to an order for double the security deposit.

The tenant paid the security deposit and pet damage deposit which totalled \$1400 at the start of the tenancy. The tenancy ended on March 7, 2019. The tenant provided the landlord's representative with a forwarding address by text message on March 15, 2019. The landlord's representative told the tenant she should give this to the landlord. The tenant failed to do so in a timely way although she engaged e-mails with the landlord's representative.

Section 88 of the Residential Tenancy Act provides as follows:

How to give or serve documents generally

88 All documents, other than those referred to in section 89 [special rules for certain documents], that are required or permitted under this Act to be given to or served on a person must be given or served in one of the following ways:

(a) by leaving a copy with the person;

(b) if the person is a landlord, by leaving a copy with an agent of the landlord;

(c) by sending a copy by ordinary mail or registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;

(d) if the person is a tenant, by sending a copy by ordinary mail or registered mail to a forwarding address provided by the tenant;

(e) by leaving a copy at the person's residence with an adult who apparently resides with the person;

(f) by leaving a copy in a mailbox or mail slot for the address at which the person resides or, if the person is a landlord, for the address at which the person carries on business as a landlord;

(g) by attaching a copy to a door or other conspicuous place at the address at which the person resides or, if the person is a landlord, at the address at which the person carries on business as a landlord;

(h) by transmitting a copy to a fax number provided as an address for service by the person to be served;

(i) as ordered by the director under section 71 (1) [director's orders: delivery and service of documents];

(j) by any other means of service prescribed in the regulations.

Policy Guideline 12 provides that this provision applies to the Tenant giving Notice of a forwarding address to the landlord. I determined the text message to the landlord's representatives does not meet the requirements of section 88. The tenant stated she sent an e-mail address to the landlord by registered mail but was not able to recall when this occurred and was not able to provide a tracking number for this. She also testified she exchanged e-mails with the landlord providing her address but failed to provide evidence of this. I determined the tenant failed to provide her forwarding address prior to the service of her Application for Dispute Resolution. The landlord returned most of the security deposit/pet damage deposit shortly after receiving this and commence a claim to keep the deposit within 15 days after receiving the landlord's forwarding address.

As a result I determined the tenant is not entitled to the doubling of the security deposit/pet damage deposit. The landlord withheld \$91.10 for the unpaid utility bill. The tenant is entitled to recover the balance of the security deposit less any claims that have been proven by the landlord.

- d. I dismissed the tenant's claim for recovery of the cost of the filing fee as most of the tenant's claims have been dismissed.

Landlord's Application:

The Residential Tenancy Act provides the tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access. The tenant must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant and is liable to compensate the landlord for failure to do so. In some instances the landlord's standards may be higher than what is required by the Act. The tenant is required to maintain the standards set out in the Act. The tenant is not required to make repairs for reasonable wear and tear. The applicant has the burden of proof to establish the claim on the evidence presented at the hearing.

With respect to each of the landlord's claim I find as follows:

- a. I dismissed the landlord's claim of \$30 for a missing garage door opener. The tenant testified she never received a garage door opener and perhaps it is in the possession of the previous tenant. I determined that the landlord failed to prove that the garage door opener was provided to the tenant at the start of the tenancy.
- b. I dismissed the landlord's claim of \$115 for the cost of carpeting cleaning. The landlord failed to provide receipts to prove this claim. The tenancy was short in duration. I accept the testimony of the tenant that the representative of the landlord who conducted the inspection told her it was not necessary to clean the carpet.
- c. The landlord claimed the sum of \$91.10 for the cost of a water bill. The bill covered the period from February 16, 2019 to the middle of April. The tenancy ended on March 7 2019 and new tenants moved in the next day. I determined the tenant is responsible for the sum \$31.89 which is the proportionate share for the period of time the tenant was living in the rental unit.
- d. I dismissed the landlord's claim for the cost of the filing fee as the landlord has failed in most of her claims and this action may not have been necessary had the landlord properly calculated the tenant's portion of the water bill.

Monetary Order:

I determined the landlord has established a claim against the tenant in the sum of \$31.89.

Security Deposit:

The landlord has withheld \$91.10 of the security deposit/pet damage deposit. I ordered that the landlord shall retain the sum of \$31.89 of this sum. I further ordered that the

landlord pay to the Tenant the balance of the security deposit/pet damage deposit in the sum of \$59.21.

It is further Ordered that this sum be paid forthwith. The parties are given a formal Order in the above terms and the respondent must be served with a copy of this Order as soon as possible.

Should the respondent fail to comply with this Order, the Order may be filed in the Small Claims division of the Provincial Court and enforced as an Order of that Court.

**This decision is final and binding on the parties.**

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: July 18, 2019

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Residential Tenancy Branch