



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding BROWN BROS HOLDINGS C/O FIRSTSERVICE  
RESIDENTIAL and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      FFL MNDCL-S

### Introduction

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

- A monetary award for damages and loss pursuant to section 67;
- Authorization to retain the security deposit pursuant to section 38; and
- Authorization to recover the filing fee from the tenant pursuant to section 72.

The tenant did not attend this hearing which lasted approximately 10 minutes. The teleconference line remained open for the duration of the hearing and the Notice of Hearing was confirmed to contain the correct hearing information. The corporate landlord was represented by their agent (the "landlord") who was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

The landlord testified that they served the tenant with the notice of application and evidence by registered mail sent to the forwarding address provided by the tenant. The landlord submitted a valid Canada Post tracking receipt as evidence of service. Based on the evidence I find that the tenant is deemed served with the landlord's materials on May 22, 2019, five days after mailing, in accordance with sections 88, 89 and 90 of the *Act*.

### Issue(s) to be Decided

- Is the landlord entitled to a monetary award as claimed?
- Is the landlord entitled to retain the security deposit for this tenancy?
- Is the landlord entitled to recover the filing fee from the tenant?

### Background and Evidence

This tenancy ended by way of a Writ of Possession enforced in February, 2019. The landlord incurred costs including filing fees and bailiff costs to end the tenancy. The total amount of the losses suffered by the landlord is \$3,025.00. The landlord submitted into evidence invoices for the expenses incurred.

There is a security deposit of \$340.00 currently held by the landlord. The tenant provided a forwarding address in a letter dated May 7, 2019 that was received by the landlord on May 8, 2019.

### Analysis

Section 38 of the *Act* requires the landlord to either return the tenant's security deposit or file for dispute resolution for authorization to retain a security deposit within 15 days of the end of a tenancy or receiving a forwarding address in writing. If that does not occur, the landlord must pay a monetary award pursuant to section 38(6) of the *Act* equivalent to double the value of the security deposit.

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

In the present case the tenant provided their forwarding address in a letter dated May 7, 2019, received by the landlord on May 8, 2019. The landlord filed their application to retain the security deposit on May 15, 2019, within the 15 days provided under the *Act*.

I accept the evidence of the landlord that they incurred costs to enforce their order and take possession of the rental unit. I accept the evidence that the monetary amount of the losses incurred by the landlord arising from the tenant's failure to vacate the rental unit in defiance of the *Act*, is \$3,420.00. I issue a monetary award in that amount, accordingly.

In accordance with sections 38 and the offsetting provisions of 72 of the *Act*, I allow the landlord to retain the tenant's security deposit in partial satisfaction of the monetary award issued in the landlord's favour.

As the landlord's application was successful the landlord may recover their filing fee from the tenant.

### Conclusion

I issue a monetary award in the landlord's favour as against the tenant in the amount of \$2,785.00 representing the losses incurred and the filing fee less the security deposit for this tenancy.

The landlord is provided with the Order in the above terms and the tenant must be served with the Order as soon as possible. Should the tenant fail to comply with the 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 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: August 23, 2019

---

Residential Tenancy Branch