



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNDCL-S, FFL;    MNDCT, FFT

### Introduction

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

- a monetary order for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("Regulation") or tenancy agreement, pursuant to section 67;
- authorization to retain the tenant's security deposit, pursuant to section 38; and
- authorization to recover the filing fee for her application, pursuant to section 72.

This hearing also dealt with the tenant's application pursuant to the *Act* for:

- a monetary order for compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement, pursuant to section 67; and
- authorization to recover the filing fee for his application, pursuant to section 72.

The tenant, the landlord, and the landlord's agent attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The landlord confirmed that her agent had permission to assist her at this hearing. This hearing lasted approximately 54 minutes.

Both parties confirmed receipt of the other party's application for dispute resolution hearing package. In accordance with sections 89 and 90 of the *Act*, I find that both parties were duly served with the other party's application.

The landlord's agent stated that she received the tenant's application on November 22, 2019, and the landlord said that she received it on November 25, 2019. The landlord confirmed that she wanted to deal with the tenant's application at this hearing even though she received it late.

### Issues to be Decided

Is either party entitled to a monetary order for compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement?

Is the landlord entitled to retain the tenant's security deposit?

Is either party entitled to recover the filing fee for their application?

### Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of the respective submissions and arguments are reproduced here. The relevant and important aspects of both parties' claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on December 21, 2018 and ended on October 29, 2019. Monthly rent in the amount of \$2,800.00 was payable on the 21<sup>st</sup> day of each month. A security deposit of \$1,400.00 was paid by the tenant and the landlord continues to retain this deposit in full. A written tenancy agreement was signed by both parties. A move-in condition inspection report was completed but a move-out condition inspection report was not completed for this tenancy. The landlord did not have written permission to keep any amount from the tenant's security deposit. The landlord filed her application to retain the tenant's security deposit on October 3, 2019. Both parties attended a previous RTB hearing on September 24, 2019, where a decision was issued by a different Arbitrator on the same date. The file number for that hearing appears on the front page of this decision. The Arbitrator issued a two-day order of possession to the landlord based on a 1 Month Notice to End Tenancy for Cause ("1 Month Notice").

The tenant claimed that he provided a forwarding address to the landlord by way of email on November 2, 2019. The landlord denied receipt of the forwarding address.

The landlord seeks a monetary order of \$1,000.00 plus the \$100.00 application filing fee. The landlord seeks \$1,000.00 to pay a strata fine because she said the tenant conducted Airbnb rentals from the rental unit. She stated that on Jul 11, 2019, she received a warning letter from strata about the tenant's Airbnb activities, threatening a \$1,000.00 penalty for each day, and given 20 days to respond. She said that on July

23, 2019, she attended a strata meeting and on August 6, 2019, she was told she would be fined \$1,000.00 per incident. She claimed that on October 12, 2019, she received a fine of \$1,000.00 from strata and a photograph of five people from a security camera, moving their luggage. She said that strata fined her for an incident on August 9, 2019, where a FOB for the tenant's unit was used by the above five people, as well as the tenant's parking space. She said that the five people were confronted and admitted they were living in the rental unit. The landlord claimed that she did not pay the fine yet, but she would, as she received an invoice and a reminder each month for not paying it. She said that there was no deadline for payment.

The tenant disputes the landlord's application. He said that he gave a letter to strata and the landlord on October 18, 2019, that he was not doing any Airbnb rentals. He claimed that the people in the strata photograph were not living in his rental unit. He explained that the landlord was committing fraud and that he stopped Airbnb rentals as of April 2019. He stated that the landlord did not pay any fines to strata and the landlord made an agreement with strata if the tenant left the rental unit as per the previous hearing order of possession, she would not have to pay the fine.

The tenant seeks a monetary order of \$16,827.00 plus the \$100.00 filing fee.

The tenant seeks \$2,053.00 for a refund of rent from October 30, 2019 to November 20, 2019, when he was not living in the rental unit. The tenant claimed that he paid rent of \$2,800.00 for the entire month from October 21 to November 20, 2019 and he only lived there from October 21 to 29, 2019. During the hearing, the landlord agreed to refund the tenant's rent of \$2,053.00.

The tenant seeks \$11,200.00 as four month's rent compensation because he suffered mental stress, harassment, went to the doctor and took medications because he had to move out quickly, as per the landlord's order of possession. The tenant seeks \$2,000.00 which is \$40.00 per hour for 50 hours of work time, preparing for the previous RTB hearing disputing the 1 Month Notice. The tenant also seeks \$884.00 for storage costs and \$390.00 for moving costs for having to move out so quickly, due to the previous hearing decision.

The landlord disputes the above claims, stating that she received a two-day order of possession on September 26, 2019 and the tenant did not leave until October 29, 2019, when she had to get a bailiff to remove him. She said that if the tenant had cooperated with the original order of possession, he would have left earlier and not suffered all of the above costs.

The tenant seeks \$300.00 to recover a damage deposit that he paid to strata to book a meeting room. He said there was no damage to the room, but strata refused to refund him the money. He stated that when he asked strata for the money back, he was told that strata could not deal with him as a tenant, as strata had to deal with the owner of the unit. The tenant claimed that strata told him to ask the landlord for the money. The landlord disputes the tenant's claim, stating that strata never told her about the deposit, there must have been a reason that strata did not refund the money to the tenant, as he must have caused damage, and she would have to investigate further.

### Analysis

Pursuant to section 67 of the *Act*, when a party makes a claim for damage or loss, the burden of proof lies with the applicant to establish the claim on a balance of probabilities. In this case, to prove a loss, the applicant must satisfy the following four elements:

1. Proof that the damage or loss exists;
2. Proof that the damage or loss occurred due to the actions or neglect of the respondent in violation of the *Act*, *Regulation* or tenancy agreement;
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
4. Proof that the applicant followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

### Landlord's Application

On a balance of probabilities and for the reasons stated below, I dismiss the landlord's application for \$1,000.00, without leave to reapply.

I dismiss the landlord's claim for a strata fine of \$1,000.00. The landlord did not pay this fine to strata, said there was no deadline to pay it, and did not provide proof of any payment. Further, I accept the tenant's evidence that he did not rent his unit for Airbnb resulting in the above fine and that the photograph provided by the landlord to support her claim, was not related to any Airbnb rental from his unit.

Since the landlord was unsuccessful in her application, I find that she is not entitled to recover the \$100.00 application filing fee from the tenant.

### *Tenant's Application*

I award the tenant \$2,053.00 as a refund of rent from October 30 to November 20, 2019. The landlord agreed to pay this amount during the hearing.

On a balance of probabilities and for the reasons stated below, I dismiss the remainder of the tenant's application for \$14,774.00, without leave to reapply.

I find that the tenant failed to show that he suffered mental stress or harassment of \$11,200.00, as a result of having to move out of the rental unit. The tenant failed to provide medical records from his doctor or prescription records for taking medications, as he claimed that he had them but did not provide them for this hearing. The tenant failed to provide police reports, statements from police officers, or police officer witness testimony at this hearing, to show that he suffered harassment by the landlord, which is a criminal claim not related to the RTB, which only deals with tenancy-related claims. Further, the tenant was required to vacate pursuant to a previous RTB hearing decision and order of possession made at a previous RTB hearing.

I find that the tenant failed to provide any invoices, receipts or other documentation to show that he paid moving costs of \$390.00. The tenant provided an invoice for storage costs of \$884.00 but no receipt or other documentation to show that he paid for this fee. The tenant failed to provide work records, including a paystub, employment letter, or other documentation to show that he missed 50 hours of time off work at \$40.00 per hour for a total of \$2,000.00. Further, the tenant was required to vacate pursuant to a previous RTB hearing decision and order of possession made at a previous RTB hearing. The tenant is not entitled to any preparation time for a hearing, except for filing fees, as per section 72 of the *Act*.

I find that the tenant is not entitled to \$300.00 from the landlord for a strata fee. Although the tenant provided a copy of the cheque, it was addressed to strata, not the landlord. The landlord did not receive this payment from the tenant. The tenant did not provide written documentation from strata showing that they would not deal with his claim and that he was required to deal only with the landlord. Further, the tenant did not provide any details of the payment or room booking to the landlord and strata may have withheld this deposit for damage or other reasons. Therefore, I find that the landlord is not responsible for this cost.

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 the deposit, within 15 days after the later of the end of a tenancy and the tenant's provision of a forwarding address in writing. If that does not occur, the landlord is required to pay a monetary award, pursuant to section 38(6)(b) of the *Act*, equivalent to double the value of the deposit. However, this provision does not apply if the landlord has obtained the tenant's written authorization to retain all or a portion of the deposit to offset damages or losses arising out of the tenancy (section 38(4)(a)) or an amount that the Director has previously ordered the tenant to pay to the landlord, which remains unpaid at the end of the tenancy (section 38(3)(b)).

I make the following findings based on a balance of probabilities. The tenancy ended on October 29, 2019. The tenant did not give the landlord written permission to retain any amount from his security deposit. The landlord did not return the deposit to the tenant. The landlord applied to retain the deposit on October 3, 2019, before the end of the tenancy.

The landlord denied receiving the tenant's forwarding address, which the tenant said was sent to the landlord by email. The tenant provided a copy of the email, which was sent on November 6, 2019. Email is not a valid service method under section 88 of the *Act*. However, I find that the landlord was deemed to be sufficiently served with the tenant's forwarding address by email, as per section 71(2)(c) of the *Act*. The email was sent to the landlord's email address confirmed by her during this hearing. The email was also sent to the landlord's agent, who listed this email on the landlord's application and the landlord confirmed it during the hearing.

No interest is payable on the tenant's security deposit during the period of this tenancy. I find that the tenant is entitled to the return of his security deposit of \$1,400.00.

As the tenant was only partially successful in his application, I find that he is not entitled to recover the \$100.00 filing fee for his application.

Conclusion

I issue a monetary order in the tenant's favour in the amount of \$3,453.00 against the landlord. The landlord must be served with this Order as soon as possible. Should the landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

The remainder of both parties' applications is dismissed 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: November 26, 2019

---

Residential Tenancy Branch