



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes

**FFT MNDCT**

### Introduction

This hearing dealt with an application by the tenant under the *Residential Tenancy Act* (the *Act*) for the following:

- A monetary order for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement pursuant to section 67 of the *Act*;
- An order requiring the landlord to reimburse the tenant for the filing fee pursuant to section 72.

The landlord attended with a translator ("the landlord"). The tenant attended. The hearing process was explained, and an opportunity was given to ask questions about the hearing process. Each party had the opportunity to call witnesses and present affirmed testimony and written evidence. No issues of service were raised. I find the tenant served the landlord in accordance with section 89 of the *Act*.

The tenant filed an Amendment on September 11, 2019 withdrawing her claim for return of the security deposit.

### Issue(s) to be Decided

Is the tenant entitled to the following:

- A monetary order for compensation for damage or loss under the *Act, Residential Tenancy Regulation ("Regulation")* or tenancy agreement pursuant to section 67 of the *Act*;
- An order requiring the landlord to reimburse the tenant for the filing fee pursuant to section 72.

### Background and Evidence

The tenant resided out of province and was moving to attend university. The parties agreed the tenant responded to the landlord's advertisement of the unit on the internet. The parties had never met.

After discussions and the landlord sending a video of the unit to the tenant (which included the common room, discussed below), the parties agreed the tenant would rent the premises. They signed an agreement which the tenant stated took place in mid-July 2019; the landlord was uncertain regarding the date.

The tenant submitted an undated, signed copy of the tenancy agreement. The tenancy began August 15, 2019. Rent was \$900.00 monthly payable on the 30<sup>th</sup> or 31<sup>st</sup> of the month. The tenant explained that the parties agreed she could move in two weeks early to get ready for school. The tenant provided a security deposit of \$450.00 which the landlord holds. The tenant has not provided authorization to the landlord to retain the security deposit.

The parties agreed the tenant paid \$900.00 for the "first month's rent".

The parties disagreed on what the tenant claimed was breach by the landlord of material terms of the tenancy.

The tenant testified that the unit consisted of a bedroom and a shared bathroom and kitchen. The tenant stated she informed the landlord in no uncertain terms that the other person with whom she would be sharing a bathroom, must be a female. During the hearing, the tenant explained that she had had unfortunate unpleasant experiences with sharing a bathroom with a male, and under no circumstances would she agree to do so again. The tenant testified that the landlord agreed to this term.

The tenant testified that she moved in to the unit on August 15, 2019 and learned to her dismay that the occupants of the other bedroom with whom she would be sharing a kitchen and bathroom were a man and his adult son. The tenant stated she immediately texted the landlord reminding her of the tenant's requirement that she would only share a bathroom with a female. The landlord said she would see what she could do.

The tenant submitted many translated texts between the parties beginning when she moved in. The texts indicate that the tenant immediately complained about the sharing arrangements. In reply, the landlord proposed a face-to-face meeting which took place on the second day of the tenancy. The subsequent texts discuss the tenant's requirement to have a female to share the bathroom and kitchen. The tenant asked what the landlord planned to do about it; the landlord in reply promised to look after the issue and suggested she might construct another bathroom.

The tenant testified that by the fifth day of her occupancy, it was clear from the meetings with the landlord and with the exchanged texts, that the landlord has misled her by promising that the other occupant would be female, and that the landlord did not intend to do anything to remedy the situation. The tenant testified she felt "mentally stressed, anxious and frightened during my entire stay". Accordingly, the tenant vacated on the fifth day, August 20, 2019; it was agreed the tenant would move out and the landlord would help her find another place to live.

The second material breach of terms involved the use of the common room. The tenant testified that she was alarmed to find out on moving in, that the common room, included by the landlord in the video of the unit, was being used by the landlord for music lessons from Monday to Friday. The tenant testified that the landlord occupied the space, which contained a piano, and conducted noisy and disturbing music lessons throughout the day which the tenant could clearly hear. This meant that people unknown to the tenant were entering the building which felt unsafe to the tenant.

The parties agreed that the landlord offered to return \$700.00 of the tenant's money. The tenant refused to accept anything other than full return of the \$900.00 rent and \$450.00 security deposit.

In response the landlord stated as follows: the tenant never told the landlord that she would only share a bathroom with a female; and the landlord did not conduct the music lessons as claimed in the common room, which, in any event was not intended to be used by the tenant. The landlord also stated that the tenant's interpretation of events and translation of texts were not accurate.

The agreement is silent with respect to the gender of the sharing occupant and the use of the common room.

The landlord did not submit any supporting documents.

The tenant requested return of the \$900.00 she initially paid for rent as well as reimbursement of the \$100.00 filing fee. The tenant withdrew the remainder of her claims.

### Analysis

While I have turned my mind to the documentary evidence and the testimony of the landlord, not all details of the 50-minute hearing, submissions and arguments are reproduced here. The relevant and important aspects of the landlord's claims and my findings are set out below.

Section 67 of the *Act* allows me to issue a monetary award for loss resulting from a party violating the *Act*, regulations or a tenancy agreement.

Section 7(1) of the *Act* provided that if a landlord or tenant does not comply with the *Act*, regulation or tenancy agreement, the non-complying party must compensate the other for damage or loss that results.

To claim for damage or loss, the claiming party bears the burden of proof on a balance of probabilities; that is, something is more likely than not to be true. The claimant must establish four elements.

The claimant must prove the existence of the damage or loss. Secondly, the claiming party must that the damage or loss stemmed directly from a violation of the agreement or a contravention on the part of the other party.

Once those elements have been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. Finally, the claimant has a duty to take reasonable steps to reduce, or mitigate, their loss.

#### *Breach of a material term*

A party may end a tenancy for the breach of a material term of the tenancy, but the standard of proof is high. To determine the materiality of a term, an Arbitrator will focus upon the importance of the term in the overall scheme of the Agreement, as opposed to the consequences of the breach.

It falls to the person relying on the term, in this case the tenant, to present evidence and argument supporting the proposition that the term was a material term. As noted in *RTB Policy Guideline #8*, a material term is a term that the parties both agree is so important that the most trivial breach of that term gives the other party the right to end the Agreement. The question of whether a term is material and goes to the root of the contract must be determined in every case in respect of the facts and circumstances surrounding the creation of the Agreement in question. It is entirely possible that the same term may be material in one agreement and not material in another. Simply because the parties have stated in the agreement that one or more

terms are material is not decisive. The Arbitrator will look at the true intention of the parties in determining whether the clause is material.

Policy Guideline #8 reads in part as follows:

*To end a tenancy agreement for breach of a material term the party alleging a breach...must inform the other party in writing:*

- *that there is a problem;*
- *that they believe the problem is a breach of a material term of the tenancy agreement;*
- *that the problem must be fixed by a deadline included in the letter, and that the deadline be reasonable; and*
- *that if the problem is not fixed by the deadline, the party will end the tenancy...*

In considering the testimony of the parties, I gave considerable weight to the tenant's testimony. The tenant was well prepared and organized for the hearing. She was a credible witness who clearly described the negotiations that led up to the tenancy agreement. I found her assertion credible that she required that the person with whom she shared a bathroom be female and that she clearly communicated this to the landlord. The tenant submitted many translated texts. While I acknowledge the landlord's assertion that the translations are not accurate, I give considerable weight to the fact that the landlord submitted none of her own translations. I prefer the tenant's evidence in all respects to the landlord's unsupported testimony.

Based upon the version of events recounted by the tenant, which I believe, I find the parties agreed that a material term of the tenancy was that the tenant would share a bathroom with a female. I find the landlord breached this material term and did not inform the tenant that male occupants were already there.

I find that the tenant immediately notified the landlord of the breach of the material term the day she moved in. I find the tenant gave the landlord adequate opportunity to remedy the situation. I find that the urgent exchange of texts plus meetings was clear notice to the landlord that she must remedy the situation forthwith. I find, as testified by the tenant, that the parties agreed this was so important to the tenant that they mutually ended the agreement on the fifth day of

occupancy. I find the landlord failed to take any adequate steps in the meantime to remedy the situation and the tenant was entitled to vacate the unit for breach of a material term.

I find the tenant has met the burden of proof on a balance of probabilities that the landlord breached a material term of the tenancy.

I will not consider the issue of the use of the common room in view of my decision.

#### *Conclusion*

I find the tenant has met the burden of proof on a balance of probabilities that the landlord breached a material term of the agreement, the tenant incurred a loss of \$900.00, and the tenant took all reasonable steps to mitigate losses.

I therefore award the tenant a monetary award of \$900.00. I also award the tenant reimbursement of the filing fee of \$100.00 for a total monetary order of \$1,000.00.

#### Conclusion

I therefore award the tenant a monetary order of \$1,000.00. This order must be served on the landlord. This order may be filed in the British Columbia Supreme 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: December 27, 2019

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Residential Tenancy Branch