



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNRL-S FFL

### Introduction

This hearing was convened as a result of the landlord's Application for Dispute Resolution (application) seeking remedy under the *Residential Tenancy Act* (the Act) for a monetary order for unpaid rent or utilities, for authorization to retain all or part of the tenant's security deposit, and to recover the cost of the filing fee.

The landlord attended the teleconference hearing and gave affirmed testimony. During the hearing the landlord was given the opportunity to provide their evidence orally. A summary of the evidence is provided below and includes only that which is relevant to the hearing.

As the tenant did not attend the hearing, service of the Notice of a Dispute Resolution Proceeding dated September 3, 2019 (Notice of Hearing), application and documentary evidence were considered. The landlord testified that the Notice of Hearing, application and documentary evidence were served on the tenant by registered mail on September 3, 2019. A registered mail tracking number referenced on the cover page of this decision was submitted in evidence. A copy of the registered mail receipt was also submitted in evidence. According to the online registered mail tracking website the tenant signed for and accepted the registered mail package on September 5, 2019.

Based on the above, I find that the tenant was sufficiently served on September 5, 2019 with the Notice of Hearing, application and documentary evidence, which is the date the tenant signed for and accepted the registered mail package. Given that the tenant did not attend the hearing, I consider this matter to be undisputed by the tenant and the hearing continued without the tenant present in accordance with Rule 7.3 of the RTB Rules.

### Preliminary and Procedural Matters

Firstly, the landlord confirmed that the tenant failed to pay rent in the amount of \$2,000.00 and is seeking to retain the tenant's security deposit towards that amount, so pursuant to section 64(3)(c) of the Act, I amend the landlord's application to a claim of \$2,000.00, before setting off the security deposit. I find the tenant would have been aware or ought to have been aware of this, which has led to my decision to amend the application.

Secondly, I accept the landlord's testimony that they inadvertently listed the rental unit as being in Vancouver, when it should have read Burnaby and have changed the city of the rental unit to Burnaby pursuant to section 64(3)(c) of the Act.

Thirdly, the landlord confirmed that they do not use email and do not have an email address for the tenant. As a result, this decision will be sent by regular mail to both parties. If the landlord is entitled to a monetary order, it will be sent by regular mail to the landlord for service on the tenant.

#### Issues to be Decided

- Is the landlord entitled to a monetary order under the Act, and if so, in what amount?
- What should happen to the tenant's security deposit under the Act?
- Is the landlord entitled to the recovery of the cost of the filing fee under the Act?

#### Background and Evidence

The landlord testified that a month to month tenancy began on April 1, 2019. The landlord testified that monthly rent was \$2,000.00 during the tenancy. The landlord stated that the tenant paid a security deposit of \$1,000.00 at the start of the tenancy, which the landlord continues to hold.

The landlord stated that on August 14, 2019, the tenant provided their written notice to end the tenancy. Although the tenant wrote that they would be vacating the rental unit on September 15, 2019, the landlord confirmed that the tenant provided their written notice late and could not end the tenancy until September 30, 2019. The landlord testified that the tenant failed to pay September 2019 in the amount of \$2,000.00.

The landlord is seeking \$2,000.00 for unpaid September 2019 rent, plus the \$100.00 filing fee. The landlord has also requested to offset the money owed with the tenant's security deposit of \$1,000.00.

### Analysis

Based on the undisputed documentary evidence and the undisputed testimony of the landlord provided during the hearing, and on the balance of probabilities, I find the following.

As the tenant was served with the Notice of Hearing, application and documentary evidence and did not attend the hearing, I consider this matter to be unopposed by the tenant. Section 26 of the Act applies and states:

#### **Rules about payment and non-payment of rent**

**26(1) A 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.

[Emphasis added]

In addition, section 45(1) of the Act applies and states:

#### **Tenant's notice**

**45(1)** A tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that

**(a) is not earlier than one month after the date the landlord receives the notice, and**

**(b) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.**

[Emphasis added]

Based on the above, I find the tenant breached sections 26 and 45(1) of the Act by failing to pay rent of \$2,000.00 on September 1, 2019 and by failing to provide the proper one-month notice, which would make the tenancy end on September 30, 2019 and not September 15, 2019, as the tenant incorrectly assumed. As a result, I find the landlord's application is fully successful in the amount of **\$2,100.00**; comprised of \$2,000.00 in unpaid September 2019 rent, plus the \$100.00 filing fee. Pursuant to

section 38 of the Act, as the as the landlord continues to hold the tenant's security deposit of \$1,000.00, which has not accrued any interest to date, I grant the landlord authorization to retain the tenant's full \$1,000.00 security deposit plus \$0.00 in interest, to offset the \$2,100.00 amount owing. I grant the landlord a monetary order pursuant to section 67 of the Act, for the balance owing by the tenant to the landlord in the amount of **\$1,100.00**.

**I caution** the tenant not to breach sections 26 and 45(1) of the Act in the future.

### Conclusion

The landlord's application is fully successful.

The landlord has established a total monetary claim of \$2,100.00 as described above. The landlord has been authorized to retain the tenant's full security deposit of \$1,000.00 including \$0.00 in interest in partial satisfaction of the landlord's monetary claim. The landlord has been granted a monetary order pursuant to section 67 of the Act, for the balance owing by the tenant to the landlord in the amount of \$1,100.00. The landlord must serve the tenant with the monetary order and may enforce the monetary order in the Provincial Court (Small Claims Division).

The tenant has been cautioned as described above.

This decision will be sent by regular mail to both parties. The monetary order will be sent by regular mail to the landlord only for service on the tenant.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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