



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDCL-S, MNRL-S, FFL

### Introduction

This hearing was convened as a result of the Landlord's Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act") for a monetary order for \$800.00 for damage or compensation for damage under the Act, retaining the security deposit for this claim; a monetary order for unpaid rent of \$1,000.00, retaining the security deposit to apply to this claim; and to recover the cost of her filing fee.

The Tenant, the Landlord, and her husband, J.Y., appeared at the teleconference hearing and gave affirmed testimony. I explained the hearing process to the Parties and gave them an opportunity to ask questions about the hearing process. During the hearing the Tenant and the Landlord were given the opportunity to provide their evidence orally and to respond to the testimony of the other Party. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Neither Party raised any concerns regarding the service of the Application for Dispute Resolution or the documentary evidence. Both Parties said they had received the Application and/or the documentary evidence from the other Party and had reviewed it prior to the hearing.

### Preliminary and Procedural Matters

The Parties provided their email addresses at the outset of the hearing and confirmed their understanding that the Decision would be emailed to both Parties and any Orders sent to the appropriate Party.

Issue(s) to be Decided

- Is the Landlord entitled to a Monetary Order, and if so, in what amount?
- Is the Landlord entitled to recovery of the \$100.00 Application filing fee?

Background and Evidence

The Parties agreed that the fixed term tenancy began on May 1, 2019, and was to run to April 30, 2020, with a monthly rent of \$800.00, due on the first day of each month. The Parties agreed that the Tenant paid the Landlord a security deposit of \$400.00, and no pet damage deposit.

The Tenant said that the tenancy ended, because she did not feel safe in the rental unit, given the Landlords' behaviour. She said that the Landlord had video cameras pointed at the rental unit and at her, and that they followed her sister, who was visiting, on one occasion, and prevented her from leaving the rental unit on another occasion.

The Tenant said she moved to Canada from France and was working as a French teacher. She said she was looking for a long-term rental that was safe and quiet for two years or more. The Tenant said that this rental unit was in a good location for her work and seemed safe.

*\$200.00 Claim for Sister's Visit*

The Tenant said:

I was asking about my sister visiting. She was visiting friends, too, not staying in the unit all the time. [The Landlord] said yes, initially, but then said she would be needing extra money - \$200.00 in cash. I talked to my Mom about it, and my sister said to double check, to see if it was fair for the Landlord to be charging me for my sister's stay, since I was paying for the rent.

The Tenant said she contacted the RTB, and was told that a landlord can charge for an extra occupant, if they want to, but they must go through a process to calculate this amount. The Tenant said:

I got back to [the Landlord], asking for a legal document. [The Landlord] said the [texting application] message is the legal document. My sister didn't spend more

than four weeks in the unit. I gave flight details and her passport with departure dates and my sister didn't stay for more than 4 weeks. She was also staying with her friend in downtown Vancouver some of the time.

The Landlord pointed to messages exchanged on a texting application that read as follows:

TENANT	LANDLORD
More than 2 weeks is more money?	Yes, if more than two weeks, there would be extra money
She comes to find a family to do au pair. She will have interviews and hopefully start soon. I can pay extra money in case she doesn't find within 2 weeks. Would it be like 1000 instead of 800? I am sure 2/3 weeks would be enough but just in case.	Yes, that is right.
Ok fine with me I am deciding with my mom I will keep you updated	Ok
Ok fine with me I am deciding with my mom I will keep you updated	

Regarding the message exchange noted above, the Tenant said:

When I asked her if my sister could stay for 2 – 3 weeks, she said yes. She was then asking for \$200.00 more for my sister. I told my Mom you will need to pay this for the food and \$200.00. My Mom rents properties in France. She said to find out if [what the Landlord is asking] is legal. I contacted RTB; they said a landlord can't charge the tenant for an extra guest, unless the person is staying full time and has no other permanent address.

The Landlord said that there is nothing in the tenancy agreement stating that the Landlord will charge the Tenant extra fees if the Tenant has visitors. The Landlord said that the discussion set out in the instant messaging application above is an agreement

that forms and addendum to the tenancy agreement. The Landlord said that it is clear the Tenant is fine with this fee in the instant message communication.

Claim for August 2019 Rent

The Landlord said that the Tenant paid rent for three months – May, June and July 2019. The Landlord said that the Tenant moved out at the end of July 2019, did not inform them that she was leaving, and that she still has their keys. The Landlord said they posted on the rental unit door a 10 Day Notice to End Tenancy for Unpaid Rent in August.

The Tenant said that she left the rental unit without notice, because she did not feel safe there. She did not request the security deposit back, because she did not want the Landlord to know where she was staying; however, she indicated that she did not renounce her right to the return of the security deposit.

Claim for September 2019 Rent

In the hearing, the Tenant said that her documents from the Landlord say that the Landlord is claiming \$800.00 for unpaid rent plus \$200.00 for additional costs. She said: “I don’t have on my documents the claim for September. This was not written on the request. Now on the phone they are adding September, out of the blue.”

The Notice of Hearing that the Tenant said she received, sets out all of the Landlord’s claims noted above. Therefore, I disagree with the Tenant’s statement that she did not have any notice of this claim in the Landlord’s hearing package prior to the hearing.

The Landlords said they could not rent the suite for August, because they did not know that the Tenant was leaving or had left the rental unit for good. They said they kept the unit untouched in all of August 2019, because they said someone from the RTB had told them that they had to do this. The Landlord said: “The bottom line is that we don’t want to get in any trouble. It would be trouble for us, if she comes back.”

The Landlords submitted a photograph of the front door of the rental unit with notices to the Tenant posted on the door. One of these notices was a “Notice to Enter Premises”, indicating that the Landlord intended to access the premises on Friday, August 2, 2019,

between 10:00 a.m. to 2:00 p.m. The Landlord also submitted four photographs of the inside of the rental unit with pieces of furniture, but no personal items evident.

The Landlord said she advertised for a new tenant in the second half of September. She said she needed to discard items left in the unit and repaint it. The Landlord said the back rim of the Tenant's bed had touched the wall, leaving marks. They wanted to make the next tenant happy, therefore, they had to paint "a couple of walls."

The Tenant said that she fully cleaned the rental unit. She said it had been freshly painted before she moved in. She said there were "...no traces, no marks on the walls even behind the bed. Everything was squeaky clean; there was no need for it to be painted again."

The Tenant said:

They saw me leaving the unit. They had the address of my workplace. For my safety, I would never have given my [new] house address to them. I went to my Director's house, because I had no place to stay. She offered me her place for free. She hosted me for a few months. Never would I have given them the house address of my Director. Before I moved in, the Landlord asked me for my work reference and work address. In that reference letter is the full address, where she sent me the Application for dispute resolution. She used it for this hearing.

### Analysis

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

A party who applies for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in sections 7 and 67 of the Act. Policy Guideline #16 sets out a four-part test that an applicant must prove in establishing a monetary claim. In your case, the Landlord must prove:

1. That the Tenant violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the Landlord to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the Landlord did what was reasonable to minimize the damage or loss.

("Test")

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

*\$200.00 Claim for Sister's Visit*

A landlord may only charge a tenant rent, as set out in the tenancy agreement and subject to any rent increases made in accordance with the Act. Landlords may not charge other fees, other than those set out in the tenancy agreement or pursuant to the Residential Tenancy Act Regulation ("Regulation").

"Rent" is defined in section 1 of the Act to mean:

Money paid or agreed to be paid, or value or a right given or agreed to be given, by or on behalf of a tenant to a landlord in return for the right to possess a rental unit, for the use of the common areas, and for services or facilities. However, "rent" does not include the following: (a) a security deposit; (b) a pet damage deposit; (c) a fee prescribed under section 97 (2) (k) [*regulations in relation to fees*].

Relevant sections of the Regulation state:

**Prohibited fees**

**5** (1) A landlord must not charge a guest fee, whether or not the guest stays overnight.

**Occupants and guests**

**9** (1) The landlord must not stop the tenant from having guests under reasonable circumstances in the rental unit.

(2) The landlord must not impose restrictions on guests and must not require or accept any extra charge for daytime visits or overnight accommodation of guests.

(2.1) Despite subsection (2) of this section but subject to section 27 of the Act [*terminating or restricting services or facilities*], the landlord may impose reasonable restrictions on guests' use of common areas of the residential property.

(3) If the number of occupants in the rental unit is unreasonable, the landlord may discuss the issue with the tenant and may serve a notice to end a tenancy. Disputes regarding the notice may be resolved by applying for dispute resolution under the *Residential Tenancy Act*.

I find from the evidence that the Tenant's sister stayed with her periodically from June 25, 2019 to July 25, 2019. However, the undisputed evidence before me is that the Tenant's sister also stayed at a friend's residence elsewhere in the city, during this four-week period.

I find that the Landlord tried to circumvent the Act and Regulation by making an illegal demand for extra fees for the additional guest. I find that the Landlord's attempt to take advantage of the Tenant in this regard equates to unconscionable behaviour on the part of the Landlord, pursuant to Policy Guideline #8.

Further, I find that the instant messaging communications were discussions of this matter, not a binding agreement. Based on the evidence before me overall, I find it more likely than not that the Tenant's sister did not stay in the rental unit for more than the 2 to 3 weeks the Parties discussed in their instant messaging.

As a result of the evidence and authorities before me, I dismiss the Landlord's claim for \$200.00 compensation for the Tenant's sister's visit, without leave to reapply.

#### *Claim for August 2019 Rent*

Section 45 of the Act sets out a tenant's obligations regarding giving notice to end a tenancy. Section 45(2) of the Act deals with ending a fixed term tenancy, as follows:

**45 (2)** A tenant may end a fixed term 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,

(b) is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and

(c) 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.

The Tenant expressed her fear of staying in the rental unit, because of the cameras the Landlord installed and her claim that they harassed her sister. While the police were contacted regarding these events, there is no evidence that charges were laid against the Landlord or that the Tenant's or her sister's life or possessions were in jeopardy. I find it more likely than not that the Parties experienced personality clashes and cultural Misunderstandings during the tenancy; however, these does not justify avoiding a Party's responsibilities under the Act.

I find that the Tenant's actions in not giving the Landlord sufficient notice of the end of the tenancy resulted in the Landlord losing rental income for the month of August. I, therefore, award the Landlord recovery of **\$800.00** for August 2019 rent.

*Claim for September 2019 Rent*

I find that the Landlord provided internally inconsistent evidence regarding her knowledge of when the Tenant vacated the rental unit. The Landlord provided photographs of her entry to the rental unit on August 2, 2019, pursuant to her Notice to Enter the Premises. I find the subject of these photographs provided the Landlord with clear evidence that the Tenant had abandoned the rental unit.

The Landlord said she did not touch anything in the unit until September 2019, so that she would not get into any trouble. However, the Tenant had not paid any rent for August, and her belongings were gone, as the Landlord discovered on August 2, 2019.

Further, I find that the Landlord's photographic evidence of the condition of the rental unit on August 2, 2019, is consistent with the Tenant's evidence that she completely cleaned the rental unit, aside from having forgotten two bananas in the freezer. I find from the evidence before me that it should have taken the Landlord no more than a weekend to do any paint touch-ups or cleaning needed in the unit. The Landlord could have then advertised it as available for September 1, 2019. As a result, I find the Landlord has not provide sufficient evidence to support her claim for compensation for September 2019 rent. As a result, I dismiss this claim without leave to reapply.

*Set-Off*

The Landlord is successful in her claim for compensation for August 2019 rent in the amount of \$800.00, pursuant to section 67 of the Act. The Landlord's other claims are



dismissed without leave to reapply, as the Landlord provided insufficient evidence to support these claims. As the Landlord is only partially successful in her Application, I decline to award her recovery of the \$100.00 Application filing fee.

Therefore, the Landlord is awarded \$800.00 compensation from the Tenant. I find that this award meets the criteria under section 72(2)(b) of the Act to be offset against the Tenant's security deposit of \$400.00 in partial satisfaction of the Landlord's monetary claim. The Landlord is provided with a Monetary Order of \$400.00 from the Tenant for the remainder of the award outstanding.

### Conclusion

The Landlord's Application for compensation for damage or loss from the Tenant is partially successful. The Landlord has established a claim of \$800.00 compensation for lost rental income for August 2019 from the Tenant. The Landlord's other claims, including her Application for recovery of the filing fee, are dismissed without leave to reapply, given insufficient evidence from the Landlord on these matters.

The Landlord is authorized to retain the Tenant's \$400.00 Application filing fee in partial satisfaction of the award. The Landlord is granted a Monetary Order under section 67 for the balance due by the Tenant to the Landlord in the amount of \$400.00. This Order must be served on the Tenant by the Landlord and may be filed in the Provincial Court (Small Claims) 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: January 29, 2020

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Residential Tenancy Branch