



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNDCT, MNSD, FFT

### Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution, made on June 22, 2020 (the "Application"). The Tenant applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- an order that the Landlord return all or part of the security deposit;
- a monetary order for compensation; and
- an order granting the return of the filing fee.

The hearing was scheduled for 1:30pm on October 13, 2020 as a teleconference hearing. Only the Tenant attended the hearing at the appointed date and time. No one appeared for the Landlord. The conference call line remained open and was monitored for 28 minutes before the call ended. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. During the hearing, I also confirmed from the online teleconference system that the Tenant and I were the only persons who had called into this teleconference.

The Tenant testified the Application and documentary evidence package was served to the Landlord by registered mail on June 24, 2020. Based on the oral and written submissions of the Applicant, and in accordance with sections 89 and 90 of the *Act*, I find that the Landlord is deemed to have been served with the Application and documentary evidence on June 29, 2020 the fifth day after their registered mailing. The Landlord did not submit documentary evidence in response to the Application.

The Tenant was given an opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However,

only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Res Judicata

During the hearing, the Tenant stated that he had taken part in a previous Residential Tenancy Dispute Resolution Hearing on July 16, 2020 during which the Arbitrator ordered a portion of the Tenant's security deposit be returned to the Tenant. As a result of the July 17, 2020 decision, the Tenant was awarded a monetary order for the remaining portion of the Tenant's security deposit.

The Tenant stated that the Landlord has not yet complied with the monetary order; therefore, the Tenant was seeking further compensation during this hearing.

I find that the right to the security deposit has already been determined; therefore, this matter is *res judicata*, meaning that the matter has already been adjudicated upon and therefore, cannot be re-heard again.

As such, I deny reconsideration of this matter during this hearing and subsequently dismiss the Tenant's claim for the return of her damage deposit without leave to reapply.

### Issue(s) to be Decided

1. Is the Tenant entitled to a monetary order for compensation, pursuant to Section 67 of the *Act*?
2. Is the Tenant entitled to an order granting the return of the filing fee, pursuant to Section 72 of the *Act*?

### Background and Evidence

The Tenant testified that the tenancy began on September 1, 2020. During the tenancy, the Tenant was required to pay rent in the amount of \$1,000.00 to the Landlord on the first day of each month. The Tenant stated he paid a security deposit in the amount of \$500.00, a portion of which has been ordered to be returned to the Tenant as indicated in a previous decision dated July 17, 2020. The Tenant stated that the tenancy ended on February 28, 2020.

The Tenant stated that the Landlord served him on January 6, 2020 with a Two Month Notice to End Tenancy for Landlord's Use of the Property (the "Two Month Notice")

dated January 6, 2020 with an effective vacancy date of April 1, 2020. The Tenant submitted a copy of the Two Month Notice in support. The Tenant stated that the Landlord's reason for ending the tenancy on the Two Month Notice was;

*"The rental unit will be occupied by the landlord or the landlord's close family member (parent, spouse, or child; or the parent or child of that individual's spouse."*

The Tenant stated that after receiving the Two Month Notice, he found a new residence and provided the Landlord with his notice to end tenancy in writing on February 11, 2020 before moving out of the rental unit on February 28, 2020 in compliance with the Two Month Notice. The Tenant stated that he paid rent in full when due in February 2020. The Tenant stated that the Landlord is required to compensate the Tenant an amount equal to one month's rent payable under her tenancy agreement once the Tenant moved out of the rental unit. The Tenant stated that he provided the Landlord with his forwarding address in writing on March 5, 2020 by registered mail. The Tenant stated that to date he has not received any compensation from the Landlord.

The Tenant is claiming \$148.05 for a post office box rental. The Tenant stated that he was hesitant to provide the Landlord with his forwarding residential address at the end of the tenancy, therefore, he felt it was necessary to rent a post office box as a forwarding address.

The Tenant is claiming \$46.35 in relation to postage fees associated with serving the Landlord tenancy and dispute resolution related documents. The Tenant is claiming \$66.15 in relation to the cost of developing photographic evidence in preparation for the dispute resolution hearing. Lastly, the Tenant is claiming \$325.44 for lost wages as a result of attending the dispute resolution hearings.

### Analysis

Based on the uncontested oral testimony and documentary evidence, and on a balance of probabilities, I find:

Section 50 of the *Act* states that if a landlord gives a tenant notice to end a periodic tenancy under section 49 [*landlord's use of property*] the tenant may end the tenancy early by;

- (a) giving the landlord at least 10 days' written notice to end the tenancy on a date that is earlier than the effective date of the landlord's notice, and
  - (b) paying the landlord, on the date the tenant's notice is given, the proportion of the rent due to the effective date of the tenant's notice, unless subsection (2) applies.
- (2) If the tenant paid rent before giving a notice under subsection (1), on receiving the tenant's notice, the landlord must refund any rent paid for a period after the effective date of the tenant's notice.
- (3) A notice under this section does not affect the tenant's right to compensation under section 51 [*tenant's compensation: section 49 notice*].

Section 51(1) of the Act states;

A tenant who receives a notice to end a tenancy under section 49 [*landlord's use of property*] is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement. If a tenant referred to in subsection (1) gives notice under section 50 before withholding the amount referred to in that subsection, the landlord must refund that amount.

In this case, the Tenant testified the rent in the amount of \$1,000.00 was due to the Landlord on the first day of each month. I accept that the Landlord served the Tenant in with a Two Month Notice on January 6, 2020 with an effective vacancy date of April 1, 2020.

I accept that the Tenant provided the Landlord with his Notice to end tenancy on February 11, 2020 with an effective vacancy date of February 28, 2020. I accept that the Tenant paid rent in full for February 2020 and has not yet received compensation from the Landlord.

I accept the Tenant's uncontested testimony that he has not yet been compensated by the Landlord; therefore, Pursuant to section 67 of the *Act*, I find the Tenant is entitled to a monetary award in the amount of \$1,000.00 which represents the amount that is the equivalent of one month's rent payable under the tenancy agreement, pursuant to Section 51 of the *Act*.

The Tenant is claiming \$148.05 for a post office box rental, \$46.35 in relation to postage fees, \$66.15 in relation to the cost of developing photographic evidence, and \$325.44 for lost wages as a result of attending the dispute resolution hearings.

I find that these claims are not recoverable under the Act. As such, I dismiss these claims without leave to reapply. As the Tenant was partially successful with his Application, I find that he is entitled to recovering the \$100.00 filing fee.

Pursuant to section 67 of the Act, I find the Tenant is entitled to a monetary order in the amount of \$1,100.00.

### Conclusion

The Landlord breached the Act by not compensating the Tenant in accordance with Section 51 of the Act. The Tenant is granted a monetary order in the amount of \$1,100.00. This order must be served on the Landlord as soon as possible. If the Landlord fails to comply the monetary order it may be filed in and enforced as an order of the Provincial Court of British Columbia (Small Claims).

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: October 14, 2020

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Residential Tenancy Branch