



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes**      Tenant: FFT, MNSD, MNDCT, RPP  
Landlord: MNRL-S, MNDCL-S, FFL

### **Introduction**

This hearing dealt with cross Applications for Dispute Resolution filed by the parties under the *Residential Tenancy Act* (the “Act”).

The Tenant’s Application for Dispute Resolution was made on August 6, 2020 (the “Tenant’s Application”). The Tenant applied for the following relief, pursuant to the *Act*:

- an order granting the return of all or part of the security deposit;
- an order that the Landlord return the Tenant’s personal property;
- a monetary order for compensation; and
- an order granting recovery of the filing fee.

The Landlord’s Application for Dispute Resolution was made on June 28, 2020 (the “Landlord’s Application”). The Landlord applied for the following relief, pursuant to the *Act*:

- a monetary order for money owed or compensation for damage or loss;
- a monetary order for unpaid rent;
- an order to retain the Tenant’s security deposit; and
- an order granting recovery of the filing fee.

The Tenant and the Landlord attended the hearing at the appointed date and time. At the beginning of the hearing, the parties acknowledged receipt of their respective application packages and documentary evidence. No issues were raised with respect to service or receipt of these documents during the hearing. Pursuant to section 71 of the *Act*, I find the above documents were sufficiently served for the purposes of the *Act*.

Issue(s) to be Decided

1. Is the Tenant entitled to an order granting the return of the security deposit, pursuant to Section 38 of the *Act*?
2. Is the Tenant entitled to the return of their personal property, pursuant to Section 65 of the *Act*?
3. Is the Tenant entitled to monetary compensation for damage or loss, pursuant to Section 67 of the *Act*?
4. Is the Tenant entitled to an order granting recovery of the filing fee, pursuant to Section 72 of the *Act*?
5. Is the Landlord entitled to a monetary order for damage, compensation or loss, pursuant to Section 67 of the *Act*?
6. Is the Landlord entitled to a monetary order for unpaid rent, pursuant to Section 67 of the *Act*?
7. Is the Landlord entitled to an order granting recovery of the filing fee, pursuant to Section 72 of the *Act*?
8. Is the Landlord entitled to retain the Tenant's security deposit pursuant to Section 38 of the *Act*?

Background and Evidence

The parties testified and agreed to the following; the tenancy began on October 1, 2018. During the tenancy, the Tenant rented a room in a rental unit which was shared with other occupants. The Tenant was required to pay rent in the amount of \$560.00 which was due on the first day of each month. The Tenant paid a security deposit in the amount of \$300.00 which the Landlord continues to hold. The tenancy ended on November 1, 2019.

Tenant's Claims

The Tenant is claiming for double the return of his deposit as the Landlord has not returned the Tenant's deposit within 15 days after receiving the Tenant's forwarding address which had been included in the Tenant's previous application package. During the hearing, the parties agreed that they had a previous hearing on July 6, 2020 in which the Arbitrator notified parties that the Landlord was required to comply with Section 38 of the *Act* from the date of the previous decision dated July 6, 2020. During the hearing the Landlord confirmed that she submitted her Application to retain the Tenant's deposit in June 28, 2020.

The Tenant is claiming for the return of his personal property. The Tenant stated that he was required to travel out of Country for a family emergency on November 5, 2019. The Tenant stated that he provided his notice to end tenancy to the Landlord on November 5, 2019 with an effective vacancy date of November 30, 2019. The Tenant stated that he notified the Landlord that he would not return to the rental unit and that he would have his friend attend the rental unit to collect his belongings and to clean before the end of the tenancy.

The Tenant stated that when his friend attended the rental unit, it appeared as though the Landlord had removed the Tenant's possessions and had cleaned the rental unit. The Tenant stated that the items which were missing included; his television, blanket, pillows and a rug.

The Landlord stated that the Tenant had requested that the Landlord attempt to re-rent the rental unit for November 15, 2019. As such, the Landlord attended the Tenant's room on November 13, 2020 at which point she saw that the Tenant's room was a mess. As such, she notified the Tenant that it would require further cleaning. The Landlord stated that she did not see a television in the room, however, the Landlord admits to packing the Tenant's belongings and placing them in the closet, until such a time that the Tenant's friend could collect the belongings. The Landlord stated that the Tenant's friend attended the rental unit on several occasions without notifying her, therefore, it could be that the Tenant's friend collected the items on the Tenant's behalf.

The Tenant is claiming monetary compensation relating to the loss of the items that he is claiming were not returned to him. The Tenant is claiming \$800.00 for his television, \$100.00 for the blanket, and \$100.00 for the pillows and rug. If successful, the Tenant is also claiming the return of the filing fee paid to make the Application.

#### Landlord's Claims

The Landlord is claiming \$560.00 as the Landlord was unable to re-rent the rental unit for the month of December 2019. The parties agreed that the Tenant provided his notice to end tenancy to the Landlord on November 5, 2019 with an effective vacancy date of November 30, 2019. The Landlord stated that she held several showings, however, the room was difficult to re-rent as it was left dirty by the Tenant. The Tenant stated that he feels as though he provided the Landlord with sufficient notice to end tenancy and that he had to move as a result of a medical emergency.

The Landlord is claiming a further \$70.00 as the Tenant was short paying his rent during several months, but then was able to over pay his rent during several months. The parties agreed that the Landlord agreed to a reduced amount of rent on several occasions for the Tenant. The Landlord stated that a balance of \$70.00 is still outstanding. The Tenant denied this claim, stating that he has in fact overpaid the Landlord in rent. The Landlord provided a rent ledger in support.

The Landlord is claiming \$300.00 in relation to cleaning the Tenant's room. The Landlord stated that she had the Tenant's room cleaned on November 21, 2019 and provided a receipt in the amount of \$280.00. The Landlord provided pictures in support. The Landlord is claiming \$300.00 in relation to cleaning the common areas on November 30, 2019. The Landlord provided a receipt in the amount of \$210.00 and pictures in support.

If successful, the Landlord is seeking the return of the filing fee paid to make the Application, and to retain the Tenant's security deposit towards her claims.

### Analysis

Based on all of the above, the evidence and testimony, and on a balance of probabilities, I find:

Section 67 of the *Act* empowers me to order one party to pay compensation to the other if damage or loss results from a party not complying with the *Act*, regulations or a tenancy agreement.

A party that makes an application 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 for in sections 7 and 67 of the *Act*. An applicant must prove the following:

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

In this case, the burden of proof is on the Applicant to prove the existence of the damage or loss, and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the Respondent. Once that has been established, the Applicant must then provide evidence that can verify the value of the loss or damage. Finally, it must be proven that the Applicant did what was reasonable to minimize the damage or losses that were incurred.

### The Tenant's Claims

The Tenant has claimed for double the return of the \$300.00 security deposit he paid to the Landlord. Section 38(1) of the *Act* requires a landlord to repay deposits or make an application to keep them by making a claim against them by filing an application for dispute resolution within 15 days after receiving a tenant's forwarding address in writing or the end of the tenancy, whichever is later. If a landlord fails to repay deposits or make a claim against them within 15 days, section 38(6) of the *Act* confirms the tenant is entitled to receive double the amount of the deposits.

In this case, I accept that the parties had a previous hearing on July 6, 2020 in which the previous Arbitrator determined that the Landlord was considered to have been served the Tenant's forwarding address on July 6, 2020. I find that the Landlord submitted her Application to retain the Tenant's security deposit on June 28, 2020. As such, I find that the Landlord is in compliance with Section 38 of the *Act* and the Tenant is not entitled to double the award of his security deposit.

The Tenant has claimed for the return of his personal property. During the hearing, the Landlord stated that the Tenant's friend must have collected the Tenant's belongings as the Landlord did not keep anything. As the Landlord is not in the possession of the Tenant's belongings, I cannot order that the items be returned and dismiss this claim without leave to reapply.

The Tenant has claiming for monetary compensation in relation to the loss of the items. The Tenant is claiming \$800.00 for the loss of his television, \$100.00 for the loss of a blanket, and \$100.00 for the loss of pillows and rug.

In this case, I find that the Landlord was not entitled to remove the Tenant's personal property from the Tenant's room prior to the end of the tenancy. The Landlord stated that she moved the items to a closet to clear the room for showings. I accept that the Tenant's friend attended the rental unit to collect the Tenant's belonging, however, the Tenant stated that these items were not available to be collected.

I find that the Tenant provided insufficient evidence to demonstrate that the Landlord took the possession as the Tenant's friend also had access to the Tenant's room during this time. I find further find that the Tenant provided insufficient evidence to demonstrate that he lost these items and provided insufficient evidence to verify the value of the loss. As such, I dismiss the Tenant's claim for compensation without leave to reapply.

As the Tenant was not successful with his Application, I find that he is not entitled to the return of the filing fee.

### Landlord's Claims

The Landlord is claiming \$560.00 as she was unable to re-rent the rental unit in December 2019.

Section 45(1) of the Act states that 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.

In this case, I accept that the Landlord received the Tenant's notice to end tenancy on November 5, 2019 with an effective date of November 30, 2019. I find that the Tenant did not comply with Section 45(1) of the *Act*. I find that the Tenant's notice to end tenancy would have taken effect on November 30, 2019, which is the day before the day in the month that rent is payable under the tenancy agreement. In light of the above, I find that the Tenant is required to pay December 2019 rent to the Landlord in the amount of **\$560.00**.

In relation to the Landlord's claim for \$70.00, I find that the Landlord provided insufficient evidence to demonstrate that the Tenant was short on rent. As such, I dismiss this portion of the Landlord's claim without leave to reapply.

The Landlord is claiming \$300.00 to clean the Tenant's room on November 21, 2019. In this case, I find that the Tenant was still entitled to possession of the rental unit and could have still planned to have had his friend clean the room on the Tenant's behalf, as indicated by the Tenant. As such, I dismiss the Landlord claim without leave to reapply.

The Landlord is claiming a further \$300.00 in relation to cleaning the common areas in the rental unit on November 30, 2019. In this case, I accept that the rental unit was a shared accommodation with several roommates each renting a room. I accept that the common areas were shared amongst the roommates. As such, I find that the Landlord provided insufficient evidence to demonstrate that the Tenant caused the mess which required further cleaning. I dismiss the Landlord's claim for cleaning without leave to reapply.

Having been partially successful with her Application, I find the Landlord is entitled to the recovery of their filling fee. I further find it appropriate in the circumstance to permit the Landlord to retain the Tenant's security deposit in the amount of \$300.00 in partial satisfaction of the Landlord's monetary award.

In summary, I find the Landlord has demonstrated an entitlement to a monetary award of \$360.00, which has been calculated as follows:

<b>Claim</b>	<b>Award</b>
Unpaid Rent:	\$560.00
Filling fee:	\$100.00
<i>Less Security Deposit:</i>	<i>-\$300.00</i>
<b>TOTAL:</b>	<b>\$360.00</b>

### Conclusion

Pursuant to section 67 of the Act, the Landlord is granted a monetary order in the amount of \$360.00. The monetary order must be served on the Tenant and 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 20, 2020

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Residential Tenancy Branch