



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDCT, FFT

### Introduction

On August 25, 2020, the Tenant applied for a Dispute Resolution proceeding seeking a Monetary Order for compensation pursuant to Section 67 of the *Residential Tenancy Act* (the “*Act*”) and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

Both the Tenant and the Landlord attended the hearing. All parties in attendance provided a solemn affirmation.

The Tenant advised that the Landlord was served the Notice of Hearing and evidence package by hand on or around September 2, 2020, and the Landlord confirmed that this was received. Based on this undisputed testimony, and in accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Landlord was served the Tenant’s Notice of Hearing and evidence package. As such, I have accepted the Tenant’s evidence and will consider it when rendering this Decision.

The Landlord advised that she served the Tenant her evidence “maybe three to five weeks ago” by mail. The Tenant confirmed that she received this evidence approximately in early November 2020. Based on this undisputed testimony, I am satisfied that the Tenant received the Landlord’s evidence package. As such, I have accepted this evidence and will consider it when rendering this Decision.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Is the Tenant entitled to a Monetary Order for compensation?
- Is the Tenant entitled to recover the filing fee?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

All parties agreed that the tenancy started on August 1, 2017, that rent was established at \$860.00 per month, and that it was due on the first day of each month. The tenancy ended when the Tenant gave up vacant possession of the rental unit on August 17, 2020. A security deposit of \$450.00 and a pet damage deposit of \$300.00 were also paid, but these were returned in full at the end of the tenancy. A copy of the signed tenancy agreement was not submitted as documentary evidence.

The Tenant advised that she was seeking compensation in the amount of **\$249.00** for prorated rent from August 23, 2020 because she did not occupy the rental unit. However, a new tenant did occupy the rental unit at this point and paid a prorated amount of rent as well. She stated that she gave the Landlord her written notice to end her tenancy in July 2020, effective for September 1, 2020. While she paid the full rent for August 2020, she asked the Landlord if she could get a refund if a new tenant moved in earlier than September 1, 2020. She stated that a new tenant moved into the rental unit on August 23, 2020 and the Landlord collected prorated rent from this tenant for the balance on August 2020 as well.

She submitted that when she asked for her prorated rent back, the Landlord would not return it as she was seeking compensation for damage to a mirror. She referenced text messages, submitted as documentary evidence, to support her position that the Landlord collected prorated rent for August 2020 from the new tenant.

The Landlord advised that on August 17, 2020, a move-out inspection report was conducted with the Tenant, that the Tenant returned the keys, and that the security deposit and pet damage deposit were returned. She stated that a new tenant moved into the rental unit on August 23, 2020, but she did not pay any prorated rent for August 2020. She submitted that she asked the new tenant on or around August 27, 2020 to write a letter confirming that prorated rent was never accepted for the portion of August

2020 that she occupied the rental unit; however, this new tenant stated that she was not comfortable doing this. She stated that the new tenant calculated the prorated amount of rent for August 2020 and sent it to the Landlord on September 12, 2020, but the Landlord did not accept this. She referenced documentary evidence submitted of these rejected electronic transfers.

She then confirmed a text message conversation with the Tenant that happened on August 25, 2020 where she stated to the Tenant, "No that's fine i[sic] will return the prorated rent to Amanda... i[sic] will not charge her for the rest of the month. That way it keeps it clean between us and I don't have to return any prorated amount to you... I also called the rtb and that[sic] what they suggested". She proceeded to change her testimony about when the new tenant attempted to pay her for prorated August 2020 rent and stated that it was near the end of August 2020. The Landlord subsequently made another contrary submission that the new tenant attempted to pay her the prorated rent for August 2020 on August 25, 2020 by electronic transfer. However, she did not submit any evidence of this. She stated that she rejected this payment as the Tenant had paid for August 2020 rent in full.

### Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this Decision are below.

Section 67 of the *Act* allows for an Arbitrator to determine the amount of compensation to be awarded to a party if a party has not complied with the *Act*.

With respect to the Tenant's claims for compensation for loss, when establishing if monetary compensation is warranted, I find it important to note that Policy Guideline # 16 outlines that when a party is claiming for compensation, "It is up to the party who is claiming compensation to provide evidence to establish that compensation is due", that "the party who suffered the damage or loss can prove the amount of or value of the damage or loss", and that "the value of the damage or loss is established by the evidence provided."

As noted above, the purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. When establishing if monetary compensation is warranted, it is up to the party claiming

compensation to provide evidence to establish that compensation is owed. In essence, to determine whether compensation is due, the following four-part test is applied:

- Did the Landlord fail to comply with the *Act*, regulation, or tenancy agreement?
- Did the loss or damage result from this non-compliance?
- Did the Tenant prove the amount of or value of the damage or loss?
- Did the Tenant act reasonably to minimize that damage or loss?

Furthermore, when two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making the claim has the burden to provide sufficient evidence over and above their testimony to establish their claim. Given the contradictory testimony and positions of the parties, I must first turn to a determination of credibility. I have considered the parties' testimonies, their content and their demeanour, as well as whether it is consistent with how a reasonable person would behave under circumstances similar to this tenancy.

Considered in its totality, I find the Landlord lacking in credibility based on her inconsistent submissions on when the new tenant first attempted to pay for the prorated August 2020 rent. Initially, she stated that the new tenant first attempted to pay for this prorated August 2020 rent by electronic transfer on September 12, 2020. However, when she acknowledged that she had a text message conversation on August 25, 2020 with the Tenant where she indicated that she would return the prorated rent to the new tenant and not charge her for the rest of the month, she then changed her testimony twice, of when the new tenant attempted to pay her this prorated amount.

I find that the Landlord's statements about when the new tenant attempted to pay this prorated rent were clearly contradictory and her testimony appeared to change in an attempt to fit the evidence that was presented before me. Consequently, this causes me to doubt the truthfulness of her submissions and her credibility on the whole. As such, I find that I prefer the Tenant's submissions and evidence.

Given that the consistent and undisputed evidence is that the Tenant gave up vacant possession of the rental unit on August 17, 2020 and that a new tenant moved in on August 23, 2020, I find it more likely than not that the text messages on August 25, 2020 confirm that they had an agreement that prorated rent would be returned to the Tenant should a new tenant occupy the rental unit prior to September 1, 2020. Furthermore, given the fact that the Landlord directly stated on August 25, 2020 that she would "return the prorated rent" to the new tenant, this confirms, in my view, that she had already collected this rent from the new tenant.

When reviewing the totality of the evidence before me, I am satisfied on a balance of probabilities that the Landlord and the Tenant had an agreement that prorated rent would be returned to the Tenant should a new tenant move into the rental unit in August 2020, that a new tenant did move in on August 23, 2020, and that the Landlord accepted prorated rent from this new tenant on or around August 23, 2020. Given this, the Landlord effectively collected rent from the Tenant when she should not have as she had already collected rent from the new tenant. Based on the Tenant's submissions, in conjunction with the Landlord's dubious testimony, I am satisfied that the Tenant has substantiated her claim. As a result, I grant the Tenant a monetary award in the amount of **\$249.00**.

As the Tenant was successful in her claim, I find that the Tenant is entitled to recover the \$100.00 filing fee paid for this Application.

### Conclusion

The Tenant is provided with a Monetary Order in the amount of **\$349.00** in the above terms, and the Landlord must be served with **this Order** as soon as possible. Should the Landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial 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: November 26, 2020

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Residential Tenancy Branch