



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Royal LePage East Kootenay Realty  
Ltd. and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      LL: MNDL-S, FFL  
                                 TT: MNSDS-DR, FFT

### Introduction

This hearing dealt with applications from both the landlord and tenants pursuant to the *Residential Tenancy Act* (the “*Act*”).

The landlord applied for:

- A monetary award for damages and loss pursuant to section 67;
- Authorization to retain the security deposit for this tenancy pursuant to section 38; and
- Authorization to recover the filing fee from the tenant pursuant to section 72.

The tenant, in an application adjourned from an *ex parte* Direct Request Proceeding, applied for:

- A return of all or a portion of the security deposit pursuant to section 38; and
- Authorization to recover the filing fee from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The corporate landlord was represented by its agents. DK primarily spoke on behalf of the landlord (the “landlord”). The individual tenant was represented by their parents who stated they were acting as agents.

### Preliminary Issue – Service

The landlord confirmed receipt of the tenant’s application and materials. Based on the testimony I find the landlord duly served with the tenant’s materials in accordance with sections 88 and 89 of the *Act*.

The landlord testified that they had not served the tenant with their application or evidence and believed it was all done automatically online.

Section 59(3) of the *Act* and Rule 3.1 of the Rules of Procedure establishes that a person who makes an application for dispute resolution must give a copy of the application to the other party.

I accept the evidence of the landlord that they have not served the tenant with their materials in a manner consistent with the service requirements of section 89(1) of the *Act* or at all. Accordingly, I dismiss the landlord's application in its entirety as I am not satisfied that the tenant was served with the application for dispute resolution.

#### Issue(s) to be Decided

Is the tenant entitled to a return of the security deposit?

Is the tenant entitled to recover the filing fee from the landlord?

#### Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the claim and my findings around each are set out below.

This tenancy began in August, 2019 and ended in June, 2020. Monthly rent was \$650.00. A security deposit of \$325.00 was paid at the start of the tenancy. The parties prepared and signed a condition inspection report at both the start and end of the tenancy. Copies of the tenancy agreement and inspection report were submitted into evidence.

The personal tenant signed the move-out condition inspection report on June 30, 2020 providing their forwarding address and agreeing to a deduction of \$200.00 from the deposit. The landlord withheld \$200.00 as agreed to and returned the balance of \$125.00 to the tenant.

The tenant's parents now submit that the tenant was incapable of making decisions or consenting to a deduction from the security deposit. The tenant's parents submit that the tenant did not have capacity to enter the tenancy agreement, nor to make decisions regarding their own financial affairs. The tenant's parents provided some description of

the tenant's medical issues which they believe prevents the tenant from having capacity.

### Analysis

Section 38 of the *Act* requires the landlord to either return all of a tenant's security deposit or file for dispute resolution for authorization to retain a security deposit within 15 days of the end of a tenancy or a tenant's provision of a forwarding address in writing. However, this provision does not apply if the landlord has obtained the tenant's written authorization to retain all or a portion of the security deposit to offset damages or losses arising out of the tenancy.

The undisputed evidence before me is that the tenant gave written authorization to the landlord that the landlord may retain \$200.00 from the security deposit for this tenancy.

The tenant's parents submit that the tenant was without capacity to enter into any agreement and the authorization provided on the condition inspection report ought to be disregarded.

Both the *Adult Guardianship Act* and *Representation Agreement Act* state that every adult is presumed to be capable of making decisions about their personal care, health care and legal affairs until the contrary is demonstrated.

While the tenant's parents testified that the tenant does not have capacity they have provided no medical evidence to support their position nor have they submitted any documents demonstrating that they have been granted committeehip by the courts.

I find the testimony of the tenant's parents to be insufficient to rebut to presumption of capacity. Accordingly, I find that the landlord was given written authorization that they may retain \$200.00 of the security deposit for this tenancy and were therefore entitled to withhold that amount.

I dismiss the tenant's application as the amount deducted from the security deposit was an amount the landlord was authorized to withhold.

Conclusion

The landlord's application is dismissed without leave to reapply.

The tenant's application is dismissed without leave to reapply.

The landlord is authorized to retain the \$200.00 from the security deposit withheld.

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: December 11, 2020

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Residential Tenancy Branch