



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes**      MNSD MNDCT FFT

### **Introduction**

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- authorization to obtain a return of all or a portion of their security deposit pursuant to section 38;
- a monetary order for compensation for money owed under the *Act*, regulation or tenancy agreement pursuant to section 67; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

The landlord was represented by her legal counsel, TF, for these proceedings. Both parties attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

The landlord confirmed receipt of the tenant's application for dispute resolution and amendment ('application'). In accordance with section 89 of the *Act*, I find that the landlord duly served with the tenant's application and amendment. Both parties confirmed receipt of each other's evidentiary materials, which were duly served in accordance with section 88 of the *Act*.

### **Issue(s) to be Decided**

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

Is the tenant entitled to a monetary order for compensation for money owed under the *Act*, regulation, or tenancy agreement?

Is the tenant entitled to recover the filing fee for this application from the landlord?

## **Background and Evidence**

While I have turned my mind to all the documentary evidence properly before me and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of this application and my findings around it are set out below.

Both parties entered into a fixed-term tenancy for 12 months that was to commence on October 1, 2020. The landlord testified that she had allowed the tenant to move in on September 27, 2020 without having to pay additional rent. The landlord collected the first and last month's rent plus a \$425.00 security deposit for this tenancy. The landlord also collected a \$100.00 "non returnable" cleaning fee as stipulated as condition 11 of the tenancy agreement. The tenancy agreement states that the "cleaning fee is to be used when the lease is terminated and the tenant has vacated the rental unit".

After some issues with the tenancy, the landlord testified that she had issued the tenant a 1 Month Notice to End Tenancy for Cause, which was posted on the tenant's door on October 5, 2020, with an effective date of November 6, 2020 indicated on the 1 Month Notice. The tenant provided the landlord with a forwarding address on October 6, 2020, requesting the return of the first and last month's rent, her security deposit, as well as the \$100.00 cleaning fee. In that hand written letter, the tenant stated she was requesting the refund as she was "being forced to move out of an illegal suite on short notice". Both parties confirmed that on the landlord sent the tenant a bank draft dated October 5, 2020 in the amount of \$2,020.00, which the tenant confirmed was cashed. The landlord noted that she had returned the first and last month's rent, plus the security deposit with \$105.00 deducted to cover the cost of changing the locks. The landlord also declined the tenant's request to reimburse the cleaning fee.

It was undisputed by both parties that the landlord changed the locks to the suite on October 7, 2020. The tenant testified that she had yet to move out, or end the tenancy, and did not give permission for the landlord to change the locks. The tenant is seeking the following losses as set out in the table below:

<b>Item</b>	<b>Amount</b>
Stress	\$25,000.00
Emergency Rent	500.00
Moving Expenses	200.00
Tote boxes	36.00
Boxes and Moving Supplies	40.00

Storage Unit	168.60
Second Month of storage	149.95
Lost Wages	840.00
Return of Cleaning Fee Paid	100.00
Return of \$105.00 of security deposit deducted for rekeying of lock	105.00
Filing Fee	100.00
<b>Total Monetary Order Requested</b>	<b>\$ 27,239.55</b>

The tenant testified that she felt harassed by the landlord, and did not feel safe living in the home. The tenant testified that she was informed that the suite was not legal, and started packing up in order to move out. The tenant testified that although she had started moving out, she did not formally end the tenancy, and the landlord had changed the locks before she had done so. The tenant is seeking the above losses associated with her having to move, and also recovery of the \$105.00 that the landlord had deducted without her permission.

The landlord testified that she had observed the tenant moving out, and after not hearing from the tenant after the issuance of the 1 Month Notice to End Tenancy, and after receiving the tenant's letter containing her forwarding address and refund request, the landlord had presumed that the tenant had moved out. The landlord testified that upon her inspection of the rental unit, the unit appeared to be vacant with the exception of the return of the key to the rental unit. The landlord wrote in her statement that "for personal safety and security I contacted a lock smith and had the lock re-keyed". The landlord states that in the evening the tenant left a message attached to her door that stated "I have not yet received any legal notification stating when I must vacate the basement suite. If you have any notification of when I must move out by please notify me".

The landlord felt that that the inspection confirmed to her that the unit had been vacated or abandoned by the tenant, and noted that the refrigerator was completely empty. Furthermore, the landlord testified that the tenant had already provided her forwarding address requesting the return of the rent and security deposit, which to the landlord signified that the tenant was ending the tenancy. Counsel for the landlord noted that several of the receipts submitted by the tenant show that the purchases were made on October 4, 2020, prior to the changing of the locks. Counsel for the landlord also submits that that this shows how the tenant had already made plans to move out, and

that the monetary claims made were not losses associated with the landlord's contravention of the *Act* or tenancy agreement.

The landlord submits that the tenant did not provide sufficient evidence to support many of the losses claimed, such as the \$25,000.00 claim for stress, nor any receipts for moving expenses. Counsel for the landlord also noted that the boxes and totes were prior purchases made before the landlord had changed the locks, and that the evidence shows that the tenant had already made the decision to move out, and that the losses claimed were a result of this decision.

### **Analysis**

Under the *Act*, a party claiming a loss bears the burden of proof. In this matter the tenant must satisfy each component of the following test for loss established by **Section 7** of the *Act*, which states;

#### ***Liability for not complying with this Act or a tenancy agreement***

*7 (1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.*

*(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.*

The test established by Section 7 is as follows,

1. Proof the loss exists,
2. Proof the loss was the result, *solely, of the actions of the other party (the landlord)* in violation of the *Act* or Tenancy Agreement
3. Verification of the actual amount required to compensate for the claimed loss.
4. Proof the claimant (tenant) followed section 7(2) of the *Act* by taking *reasonable steps to mitigate or minimize the loss*.

Therefore, in this matter, the tenant bears the burden of establishing their claim on the balance of probabilities. The tenant must prove the existence of the loss, and that it stemmed directly from a violation of the tenancy agreement or a contravention of the

Act on the part of the other party. Once established, the tenant must then provide evidence that can verify the actual monetary amount of the loss. Finally, the tenant must show that reasonable steps were taken to address the situation to *mitigate or minimize* the loss incurred.

Section 31 of the Act states as follows:

**Prohibitions on changes to locks and other access**

**31** (1) A landlord must not change locks or other means that give access to residential property unless the landlord provides each tenant with new keys or other means that give access to the residential property.

(1.1) A landlord must not change locks or other means of access to a rental unit unless

(a) the tenant agrees to the change, and

(b) the landlord provides the tenant with new keys or other means of access to the rental unit.

In this case, the landlord felt that the tenant had moved out, abandoning the rental unit. I have considered the testimony and evidence submitted by both parties, and although I am not satisfied that the tenant had ended the tenancy, I find that the landlord had thought the tenant had done so given the confusion arising from the situation. I do not find that the tenant's removal of her personal belongings justifies the landlord's right to change the locks without formal notice from the tenant that the tenant had moved out, but I find that the tenant's provision of her forwarding address combined with her request for the refund of her rent and security deposit may give a party the impression that the tenant is preparing to move out. In this case, I am satisfied that the landlord had incorrectly assumed that the tenant had moved out or abandoned the rental unit.

I must now consider whether the tenant is entitled to the losses claimed in this application. Although I accept the landlord's testimony that she had thought the tenant had abandoned the rental unit, I do not find that the tenant had in fact formally moved out or abandoned the rental unit. I find that the tenant did not provide written confirmation that she had done so, and she had yet to return the keys to the rental unit. I find that no Mutual Agreement was signed between the parties, nor did the landlord have an Order of Possession form an Arbitrator. I also note that in the 1 Month Notice to End Tenancy served on the tenant, the landlord noted an effective date of November 6, 2020. The landlord testified that she had posted the 1 Month Notice on the tenant's door

on October 5, 2020, and changed the locks 2 days later. By changing the lock on October 7, 2020, I find the landlord failed to comply with section 31 of the *Act*. I do not find that the landlord had the right to deduct \$105.00 to recover the cost of rekeying that lock.

In consideration of the evidence before me, I do note that the evidence supports that the tenant had already made plans to move out before the landlord had changed the locks. I find that this fact is further supported by the fact that the tenant had made a written request providing her forwarding address, and a refund of her rent and security deposit. Although the tenant may not have given formal notice to end the tenancy, I find that tenant had already made plans to move, including making the purchases of boxes and totes in preparation. I am not satisfied that the claims made in relation to the tenant's moving expenses are solely and directly the result of the landlord's actions or contravention of the *Act*. I find that the tenant had made the decision to move out, and these expenses were the result of her decision. Similarly, I am not satisfied that the tenant had provided sufficient evidence to support that the lost wages and emergency rent were incurred due to the landlord's actions or contravention of the *Act*. As stated above, the burden of proof is on the tenant to support their claims. Although I find that the tenant did incur losses associated with moving from the rental unit, I am not satisfied that these losses stemmed directly from the actions of the landlord. For this reason, I dismiss the tenant's monetary claims for losses associated with moving, lost wages, and storage costs without leave to reapply.

The tenant also applied for monetary compensation in the amount of \$25,000.00 for the stress she endured as a result of this tenancy. In assessing this claim, I note again that the party applying for dispute resolution bears the responsibility of demonstrating entitlement to a monetary award. I have considered the testimony and evidence of both parties, and although I acknowledge the fact that this tenancy was not a positive one for the tenant, and ended abruptly with the landlord's decision to change the locks, I find that the tenant failed to establish the amount of loss claimed, either referenced and supported by similar claims of this nature, or by providing pay stubs, receipts, statements, or written or oral testimony to support the value of the damages the tenant is seeking in this application. On this basis I dismiss the tenant's monetary claim of \$25,000.00 for stress without leave to reapply.

The tenant requested the refund of the "non—returnable" cleaning fee. Section 7 of the Residential Policy Regulation allows for the following non-refundable fees that may be charged by a landlord:

- 7** (1) A landlord may charge any of the following non-refundable fees:

- (a) direct cost of replacing keys or other access devices;
- (b) direct cost of additional keys or other access devices requested by the tenant;
- (c) a service fee charged by a financial institution to the landlord for the return of a tenant's cheque;
- (d) subject to subsection (2), an administration fee of not more than \$25 for the return of a tenant's cheque by a financial institution or for late payment of rent;
- (e) subject to subsection (2), a fee that does not exceed the greater of \$15 and 3% of the monthly rent for the tenant moving between rental units within the residential property, if the tenant requested the move;
- (f) a move-in or move-out fee charged by a strata corporation to the landlord;
- (g) a fee for services or facilities requested by the tenant, if those services or facilities are not required to be provided under the tenancy agreement.

(2) A landlord must not charge the fee described in paragraph (1) (d) or (e) unless the tenancy agreement provides for that fee.

I note that the cleaning fee is clearly noted on the tenancy agreement by the landlord that the fee is non-returnable, and is to be used when the lease is terminated and the tenant has vacated the rental unit. Although a landlord may charge a non-refundable fee for services or facilities requested by the tenant, I do not find the cleaning to be a service or facility requested by the tenant. I find that the collection of the cleaning fee does not meet the requirements of the Regulation. As stated in section 5 of the *Act*,

5 (1) Landlords and tenants may not avoid or contract out of this Act or the regulations.

(2) Any attempt to avoid or contract out of this Act or the regulations is of no effect.

Section 6 of the *Act* states:

(3) A term of a tenancy agreement is not enforceable if

- (a) the term is inconsistent with this Act or the regulations,
- (b) the term is unconscionable, or
- (c) the term is not expressed in a manner that clearly communicates the rights and obligations under it.

I find the requirement of the tenant to pay a non-refundable fee for cleaning to be inconsistent with the regulations, and is therefore of no force or effect. I order that the landlord return to the tenant the \$100.00 paid for cleaning.

Section 38(1) of the *Act* requires a landlord, within 15 days of the end of the tenancy or the date on which the landlord receives the tenant's forwarding address in writing, to either return the deposit or file an Application for Dispute Resolution seeking an Order allowing the landlord to retain the deposit. If the landlord fails to comply with section 38(1), then the landlord may not make a claim against the deposit, and the landlord must return the tenant's security deposit plus applicable interest and must pay the tenant a monetary award equivalent to the original value of the security deposit (section 38(6) of the *Act*). With respect to the return of the security deposit, the triggering event is the latter of the end of the tenancy or the tenant's provision of the forwarding address. Section 38(4)(a) of the *Act* also allows a landlord to retain an amount from a security or pet damage deposit if "at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant."

I am satisfied that the tenant had provided her forwarding address to the landlord in writing, and that the tenancy had effectively ended on October 7, 2020 when the locks were changed. I find it undisputed that the landlord had returned the tenant's security deposit and rent to her, but withheld \$105.00 to cover the cost of rekeying the lock. I find that the landlord did not apply for dispute resolution to obtain authorization to retain the \$105.00, nor did the landlord obtain the tenant's written authorization at the end of the tenancy to retain that amount. In accordance with section 38 of the *Act*, I find that the tenant is therefore entitled to a monetary order in an amount equivalent to the original security deposit plus a monetary order for the return of the \$105.00.

The filing fee is a discretionary award issued by an Arbitrator usually after a hearing is held and the applicant is successful on the merits of the application. As the tenant was only partially successful in her application, I allow the tenant to recover half of the filing fee for this application.

### **Conclusion**

I issue a monetary order in the tenant's favour in the amount of \$680.00 against the landlord as set out in the table below :

Item	Amount
Return of Cleaning Fee Paid	100.00



Monetary Award for Landlord's Failure to Comply with s. 38 of the <i>Act</i>	425.00
Return of \$105.00 of security deposit deducted for rekeying of lock	105.00
Filing Fee	50.00
<b>Total Monetary Order</b>	<b>\$ 680.00</b>

The tenant is provided with a monetary order 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.

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

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: February 25, 2021

---

Residential Tenancy Branch