



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDCL-S, FFL

### Introduction

Pursuant to section 58 of the Residential Tenancy Act (the Act), I was designated to hear an application regarding the above-noted tenancy. The landlord applied for:

- a monetary order for loss under the Act, the regulation or tenancy agreement, pursuant to section 67;
- an authorization to retain the tenant's security deposit (the deposit), under section 38; and
- an authorization to recover the filing fee for this application, under section 72.

Both parties attended the hearing. All were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

At the outset of the hearing the parties affirmed they understand it is prohibited to record the hearing.

Per section 95(3) of the Act, the parties may be fined up to \$5,000.00 if they record this hearing: "A person who contravenes or fails to comply with a decision or an order made by the director commits an offence and is liable on conviction to a fine of not more than \$5 000."

The tenant confirmed receipt of notice of hearing and the evidence (the materials) around January 23, 2021. I accept the tenant was served the materials in accordance with sections 88 and 89 of the Act.

The landlord confirmed receipt of the tenant's response evidence on May 19, 2021. I accept the landlord was served the response evidence in accordance with sections 88 and 89 of the Act.

The landlord affirmed she served a second evidence package on May 19, 2021.

Rule of Procedure 3.14 States:

Evidence not submitted at the time of Application for Dispute Resolution Except for evidence related to an expedited hearing (see Rule 10), **documentary and digital evidence that is intended to be relied on at the hearing must be received by the respondent and the Residential Tenancy Branch directly or through a Service BC Office not less than 14 days before the hearing.**  
(emphasis added)

The second evidence package served on May 19, 2021 is excluded, per Rule of Procedure 3.14.

### Issues to be Decided

Is the landlord entitled to:

1. a monetary order for loss?
2. an authorization to retain the tenant's deposit?
3. an authorization to recover the filing fee for this application?

### Background and Evidence

While I have turned my mind to the accepted evidence and the testimony of the attending parties, not all details of the submission and arguments are reproduced here. The relevant and important aspects of the landlord's claims and my findings are set out below. I explained rule 7.4 to the attending parties; it is the landlord's obligation to present the evidence to substantiate the application.

Both parties agreed the tenancy started on October 24, 2020 and ended on December 31, 2020. Monthly rent was \$660.00, due on the first day of the month. The landlord did not schedule a move in inspection and the parties did not conduct one. At the outset of

the tenancy a security deposit of \$330.00 was collected and the landlord holds it in trust. The tenancy agreement was submitted into evidence. It indicates the fixed term tenancy from November 01 to December 31, 2020 would continue as a periodic tenancy after the end of the fixed term. The rental unit is a basement unit and the landlord lives on the main floor.

The landlord affirmed she received the tenant's forwarding address in writing on January 21, 2021. The tenant stated she served her forwarding address by leaving a letter in the landlord's mailbox on January 17, 2021 at 5:00 P.M. The tenant did not authorize the landlord to retain the deposit.

The landlord testified the tenant installed a security camera (the camera) facing the front glass door of her house. The tenant said the security camera was facing the street. The tenant removed the camera from the entrance after the landlord asked her to remove the camera and reinstalled it in her bedroom. The tenant affirmed the landlord's partner asked her not to use the camera in her bedroom and she stopped using it.

The landlord is claiming for January 2021 rent in the amount of \$660.00. The landlord stated the tenant gave notice to end tenancy in writing on December 23, 2020 and the landlord re-rented the unit in April 2021. The tenant testified she did not give further notice to end tenancy because the landlord breached a material term of the tenancy agreement when she asked her not to use the camera and jeopardized her safety. The landlord said the rental unit does not have security issues.

The landlord is claiming for compensation in the amount of \$55.85. The landlord affirmed she lost her privacy because the tenant's camera was recording her front glass door. The landlord purchased a plastic film to cover her front glass door and is claiming for compensation for this expense. The tenant stated the tenancy agreement does not prohibit the installation of a security camera and that the landlord's privacy was not affected.

The landlord submitted into evidence a monetary order worksheet dated January 21, indicating a claim in the total amount of \$715.85.

### Analysis

Section 7 of the Act 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.

Residential Tenancy Branch Policy Guideline 16 sets out the criteria which are to be applied when determining whether compensation for a breach of the Act is due. It states:

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. It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. In order to determine whether compensation is due, the arbitrator may determine whether:

- a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
- loss or damage has resulted from this non-compliance;
- the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
- the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove the case is on the person making the claim.

### Deposit

Section 23(1) of the Act requires the landlord and tenant to inspect the rental unit at the outset of the tenancy. Section 23(3) of the Act requires the landlord to offer the tenant at least 2 opportunities for the inspection.

As the parties did not conduct an inspection and the landlord did not provide the tenant with at least 2 opportunities for the inspection, I find the landlord did not comply with section 23(3) of the Act. Thus, the landlord extinguished her right to claim against the deposit, per section 24(2)(a) of the Act:

The right of a landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord

**(a) does not comply with section 23 (3) [2 opportunities for inspection],**

**(b) having complied with section 23 (3), does not participate on either occasion, or**

(c) does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.

(emphasis added)

Section 38(1) of the Act requires the landlord to either return the tenant's deposit in full or file for dispute resolution for authorization to retain the deposit 15 days after the later of the end of a tenancy or upon receipt of the tenant's forwarding address in writing.

Based on the tenant's convincing and detailed testimony, I find the tenant served her forwarding address in writing on January 17, 2021 by leaving a letter in the landlord's mailbox. Section 90 (d) of the Act provides that a document left in the mailbox is deemed served three days later. Thus, I find the landlord was served the forwarding address on January 20, 2021.

In accordance with section 38(6)(b) of the Act, as the landlord extinguished her right to claim against the deposit and did not return it within the timeframe of section 38(1) of the Act, the landlord must pay the tenant double the deposit.

Residential Tenancy Branch Policy Guideline 17 states the arbitrator will double the value of the deposit when the landlord has not complied with the 15 day deadline:

Unless the tenant has specifically waived the doubling of the deposit, either on an application for the return of the deposit or at the hearing, the arbitrator will order the return of double the deposit:

[...]

- if the landlord has claimed against the deposit for damage to the rental unit and the landlord's right to make such a claim has been extinguished under the Act;

Under these circumstances and in accordance with section 38(6)(b) of the Act, I find the tenant is entitled to a monetary award of \$660.00 (double the \$330.00 deposit).

### Unpaid rent

Based on the tenancy agreement, I find the tenancy was for a fixed term from November 01 to December 31, 2020 and would continue after this date as a periodic tenancy, per section 44(3) of the Act:

If, on the date specified as the end of a fixed term tenancy agreement that does not require the tenant to vacate the rental unit on that date, the landlord and tenant have not entered into a new tenancy agreement, the landlord and tenant are deemed to have renewed the tenancy agreement as a month to month tenancy on the same terms.

I accept the landlord's uncontested testimony that the tenant did not provide a one month notice to end tenancy, as required by section 45(1) of the Act:

(1)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.

As the tenant did not provide a one month notice to end tenancy per sections 44(3) and 45(1) of the Act, the tenant must pay January 2021 rent.

Section 26 of the Act requires that a tenant pay rent when it is due under the tenancy agreement:

A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

I accept the landlord's uncontested testimony that the tenancy agreement requires the tenant to pay monthly rent of \$660.00 on the first day of the month and the tenant did not pay January 2021 rent.

As such, I award the landlord \$660.00 for January 2021 rent.

#### Plastic film

The tenancy agreement does not prohibit the installation of a security camera by the tenant.

Based on both parties' testimony, I find the tenant removed the camera from the entrance of the rental unit when the landlord asked her to remove it. The landlord did not prove, on a balance of probabilities, that the tenant failed to comply with the Act, the regulation or the tenancy agreement.

Thus, I dismiss the landlord's claim for compensation for the plastic film she purchased because of privacy concerns.

#### Filing fee and summary

As the landlord was partially successful in this application, I find the landlord is entitled to recover the \$100.00 filing fee.

In summary, the landlord is entitled to \$760.00.

#### Set-off

The tenant is awarded \$660.00. The landlord is awarded \$760.00.

Residential Tenancy Branch Policy Guideline 17 sets guidance for a set-off when there are two monetary awards:

1. Where a landlord applies for a monetary order and a tenant applies for a monetary order and both matters are heard together, and where the parties are the same in both applications, the arbitrator will set-off the awards and make a single order for the balance owing to one of the parties. The arbitrator will issue one written decision indicating the amount(s) awarded separately to each party on each claim, and then will indicate the amount of set-off which will appear in the order.

Thus, I award the landlord \$100.00.

Conclusion

Pursuant to sections 26 and 72 of the Act, I grant the landlord a monetary order in the amount of \$100.00.

This order must be served on the tenant by the landlord. If the tenant fails to comply with this order the landlord may file the order in the Provincial Court (Small Claims) to be 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: May 28, 2021

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Residential Tenancy Branch