



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes**      **MNSDS-DR, FFT, MNDL, MNDCL, MNRL, FFL**

### **Introduction**

This hearing was convened in response to applications by the landlord and the tenant.

The landlord's application is seeking orders as follows:

1. For a monetary order for unpaid rent;
2. To keep all or part of the security deposit; and
3. To recover the cost of filing the application.

The tenant's application is seeking orders as follows:

1. Return all or part of the security deposit; and
2. To recover the cost of filing the application.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing. Both parties confirmed under affirmation that they were not making any unauthorised recording of this hearing.

### **Preliminary and Procedural matters**

#### **Landlord's application**

At the outset of the hearing, I clarified the landlord's name as it was different than the name in the tenancy agreement. The landlord stated that the name in the tenancy agreement is using their English first name and the surname is correct. The landlord stated they used their birthname in their application. As the landlord uses two different names, I have amended the style of cause to reflect both names.

The landlord testified that they served the tenant with their application for dispute resolution by registered mailed sent on March 31, 2021 to the new address the tenant

provided in their application. The landlord stated the package was returned unclaimed by the tenant. Filed in evidence is a copy of the Canada post tracking number.

The tenant testified that they just arrived back in Canada for this hearing.

In this case, the tenant gave the landlord their service address in their own application. It was the tenant's responsibility to ensure that they would receive their mail. If the tenant truly was out of the country, they should have authorised someone to be able to pickup their mail, especially when they knew the landlord was entitled to serve them with any evidence and such in this case a cross application. I find the tenant was deemed to have been served with the landlord's application for dispute resolution five (5) days after it was mailed, April 5, 2021. Therefore, I will consider the landlord's application at this hearing.

#### Issue(s) to be Decided

Is the landlord entitled to a monetary order for unpaid rent?

Is the landlord entitled to a monetary order for Damages?

Are either party entitled to the security deposit?

#### Background and Evidence

The tenancy began on May 6, 2020. Rent in the amount of \$1,800.00 was payable on the first of each month. The tenancy agreement shows a security deposit of \$770.00.00 was paid by the tenant. The tenancy ended on May 31, 2020.

#### Landlord's application

The landlord claims as follows:

a.	Unpaid rent for June 2020	1,800.00
b.	Cleaning and damages	630.00
g.	Filing fee	50.00
	<b>Total claimed</b>	

#### Unpaid rent for June 2020

The landlord testified that on May 19, 2020, the tenant's girlfriend was caught stealing mail from the mail room, and this was captured on the video camera. The landlord stated that the tenant was unhappy that there were cameras in the common areas installed by the strata. The landlord stated because of this the tenant decided they were going to vacate the premise.

The tenant testified that it was one of his friend's girlfriend that got caught stealing from the mailroom. The tenant stated that because of that they both agreed to end the tenancy by mutual agreement.

#### Cleaning and damages

The landlord testified that they had to hire a company to help wash the carpet, bedding, and towels as they were heavily stained from what appeared to be blood or a red substance. The landlord stated they seek to recover the cost of \$251.92.

The landlord testified that they also had to purchase a new mattress due to the stains of blood or a red substance. The landlord stated that the mattress was new at the start of the tenancy. The landlord seeks to recover the cost of the mattress in the amount of \$178.08.

The landlord testified that the tenant also caused damage to the baseboards as they were damaged by water. The landlord stated that the rental unit was new, and the tenant was the first person to live there. The landlord seeks to recover the cost of the repair in the amount of \$200.00.

The tenant testified that they deny they caused any damage to the rental unit. The tenant stated that they had rented the premise prior as a short term accommodation, which they were happy and asked the landlord if they could rent the premise on a more permanent basis and they entered into a tenancy agreement. The tenant stated that there were many other short term stays before them.

#### Tenant's application

The tenant testified that they provided the landlord with their forwarding address in writing sent by registered mail on January 6, 2021. The tenant testified that they received the amount of \$770.00 from the landlord; however, it was not received within 15 days. The tenant testified that they also paid the amount of \$975.00.

The landlord testified that they received the tenant's forwarding address and returned the tenant's security deposit on January 12, 2021. The landlord stated the tenant gave the wrong address as their forwarding address and it is not their fault that this caused a delay in Canada post finding the tenant's correct address. The landlord stated the tenant paid \$770.00 as a security deposit not \$975.00.

The tenant confirmed they gave the landlord the wrong mailing address. The tenant stated the addendum to the tenancy agreement shows they paid \$975.00.

### Analysis

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

In a claim for damage or loss under the Act or tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities. In this case, the landlord has the burden of proof to prove their claim.

Section 7(1) of the Act states that if a landlord or tenant does not comply with the Act, regulation, or tenancy agreement, the non-comply landlord or tenant must compensate the other for damage or loss that results.

Section 67 of the Act provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

### Unpaid rent for June 2020

#### **Tenant's notice (month-to-month)**

**45** (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*

...

In this case, I do not accept that the tenancy ended by mutual agreement on May 31, 2020. I find it more likely than not that the tenant told the landlord that they were going to vacate the rental unit because they were unhappy that one of their guests were caught stealing on the surveillance camera in the mail room on May 19, 2020 and the tenancy ended on May 31, 2020. I find the tenant breached the Act when they vacated the premises without give the landlords as least one months' notice to end the tenancy.

Had the tenant given the landlord at least 30 days' notice to end the tenancy in May 2020, I find the earliest the tenant could have legally ended the tenancy was June 30, 2020.

As the tenant left with such short notice in late May 2020, I find it did not give the landlord a reasonable amount of time to mitigate the loss for June 2020 rent. The landlord is entitled to an amount sufficient to put the landlord in the same position as if the tenant had not breached the Act. This includes compensating the landlord for any loss of rent up to the earliest time that the tenant could have legally ended the tenancy. Therefore, I find the landlord is entitled to recover rent for June 2020 in the amount of **\$1,800.00.**

### Cleaning and damages

How to leave the rental unit at the end of the tenancy is defined in Part 2 of the Act.

### **Leaving the rental unit at the end of a tenancy**

*37 (2) When a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.*

Normal wear and tear does not constitute damage. Normal wear and tear refers to the natural deterioration of an item due to reasonable use and the aging process. A tenant is responsible for damage they may cause by their actions or neglect including actions of their guests or pets.

In this case, the landlord is claiming for the cost of cleaning the bedding and carpets and damages to the baseboards. While the landlord has provided a move in condition inspection report, it is not signed by the tenant. Therefore, I cannot put any weigh on an unsigned document.

I accept the bedding and towels shows some staining; however, I cannot determine if they were from the actions or neglect of the tenant. When bedding and towels are provided under the terms of a tenancy agreement, it is not unreasonable that staining would occur under normal use. Further, there were no photographs provided to prove the condition of the bedding or towels at the start of the tenancy.

I accept the carpet has a small stain; however, I cannot determine if they were from the actions or neglect of the tenant. There were no photographs provided to prove the condition of the carpet at the start of the tenancy.

I accept the baseboard shows some damage; however, I cannot determine if they were from the actions or neglect of the tenant. There were no photographs provided to prove the condition of the baseboard at the start of the tenancy.

Based on the above, I find the landlord has failed to provide sufficient evidence to prove the tenant left the rental unit damaged and unreasonably clean. Therefore, I dismiss this portion of the landlord's claim.

I find that the landlord has established a total monetary claim of **\$1,900.00** comprised of the above described amount and the \$100.00 fee paid for this application. This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court. The **tenant is cautioned** that costs of such enforcement are recoverable from the tenant.

Tenant' application

**Return of security deposit and pet damage deposit**

**38** (1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of  
(a) the date the tenancy ends, and  
(b) the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one of the following:

- (c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;
- (d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

In this case, there is no evidence that the tenant paid a security deposit of \$975.00. The addendum does not support this. The tenancy agreement shows the tenant paid the amount of \$770.00.

The tenant gave the landlord the wrong mailing address sent by registered mail on January 6, 2021. The landlord mailed the tenant security deposit to the tenant on January 12, 2021 to the address provided by the tenant. I find the landlord did repay to the tenant their security deposit within the statutory time limit.

The Act does not say that the security deposit must be received by the tenant within 15 days. Once it has been mailed it is not within the landlord's control on the date which Canada post delivers the mail to the tenant. Further, any delay of the tenant receiving their security deposit was a direct result of the tenant own actions of giving the wrong address to the landlord. Therefore, I find the tenant failed to prove a violation of the landlord.

The tenant has received their security deposit of \$770.00. I find the tenant is not entitled to double the security deposit paid. Therefore, I dismiss the tenant's claim without leave to reapply. Since the tenant was not successful, I find the tenant is not entitled to recover the cost of the filing fee.

Conclusion

The landlord is granted a monetary order. The tenant's application for return of double the security deposit is dismissed.

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: July 13, 2021

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Residential Tenancy Branch