



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Sweetome Property Management and  
[tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes     MNDCL-S, MNRL-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 unpaid rent, pursuant to section 26;
- 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), pursuant to section 38; and
- an authorization to recover the filing fee for this application, under section 72.

The landlord attended the hearing on March 22 and August 23, 2021, represented by property manager CC. The tenant was represented on March 22, 2021 by AR. The tenant attended the hearing on August 23, 2021 and was assisted by advocate SH.

At the outset of the hearings the attending parties affirmed they understand it is prohibited to record this hearing and that when one person is speaking, the other can not interrupt.

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."

### Preliminary Issue – Correction of the Tenant's Name

At the outset of the hearing the tenant corrected the spelling of her middle name. Pursuant to section 64(3)(a) of the Act, I have amended the application.

### Preliminary Issue – Jurisdiction

The application is for a monetary compensation in the amount of \$35,000.00. The landlord also applied to for an authorization to recover the \$100.00 filing fee. Thus, the total amount of the application is \$35,100.00.

Residential Tenancy Branch Policy Guideline 18 states:

Section 58(2) of the RTA and 51(2) of the MHPTA provide that the director can decline to resolve disputes for monetary claims that exceed the limit set out in the Small Claims Act. The limit is currently \$35,000. If a claim for damage or loss exceeds the small claims limit, the director's policy is to decline jurisdiction. This ensures that more substantial claims are resolved in the BC Supreme Court, where more rigorous and formal procedures like document discovery are available. If an applicant abandons part of a claim to come within the small claims limit, the RTB will accept jurisdiction.

The landlord was advised at the hearing that the claim exceeds \$35,000.00 and is therefore outside of the jurisdiction of the Residential Tenancy Branch.

The landlord amended the application to reduce the amount of the monetary application to \$34,791.59.

Pursuant to section 4.2 of the Rules of Procedure and section 64 of the Act, I amend the landlord's application for a monetary claim to \$34,791.59. Thus, the total amount of the landlord's application is \$34,891.59 (34,791.59+100.00) and I have jurisdiction to hear this matter.

#### Preliminary Issue – Service

The landlord affirmed he served the notice of hearing and the evidence (the materials) by registered mail sent on December 10, 2020 (the tracking number is recorded on the cover page of this decision). The tenant stated she may have received the materials.

The tenant affirmed she served her response evidence by registered mail sent to the landlord and the Residential Tenancy Branch. The tenant does not remember when she sent the packages and does not have access to the tracking numbers. The landlord stated he did not receive response evidence.

The tenant's testimony was vague. Based on the landlord's convincing testimony, I find the landlord served the materials in accordance with section 89(1) of the Act and that the tenant did not serve response evidence.

### Issues to be Decided

Is the landlord entitled to:

1. a monetary order for unpaid rent?
2. a monetary order for loss?
3. an authorization to retain the tenant's deposit?
4. an authorization to recover the filing?

### 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 they entered into a fixed-term tenancy from June 01, 2020 to May 31, 2021. The tenant vacated the rental unit on November 14, 2020. Monthly rent of \$4,500.00 was due on the first day of the month. At the outset of the tenancy a deposit of \$2,250.00 was collected. The tenancy agreement was submitted into evidence.

The landlord affirmed he holds in trust the \$2,250.00 deposit and the tenant did not provide her forwarding address in writing. The tenant affirmed she authorized the owner of the rental unit to retain the deposit to offset the unpaid rent. The landlord, representing the owner, affirmed he was not authorized to retain the deposit.

The landlord is claiming for unpaid rent in the amount of \$4,500.00 per month for July, August, September, October and November 2020, in the total amount of \$22,500.00. The tenant affirmed she did not pay rent because the landlord harassed her during the tenancy.

The landlord is claiming for \$11,756.28 for legal fees. The landlord affirmed he paid \$1,201.10 for legal advice and \$10,555.08 for legal representation before the Supreme Court of British Columbia. Both parties agreed the landlord served a one month notice to end tenancy and obtained an order of possession. The tenant petitioned to the Supreme Court of British Columbia to dispute the order of possession and later agreed to move out. The landlord submitted two invoices into evidence.

The landlord is claiming for \$335.31 for bailiff expenses, as the tenant only agreed to move out after the bailiff was paid and the payment is non-refundable. The landlord submitted an invoice indicating the payment of \$335.31.

The landlord submitted a monetary order worksheet dated December 09, 2020 indicating a total monetary claim of \$34,791.59.

### Analysis

Section 7 of the Act states:

Liability for not complying with this Act or a tenancy agreement

(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.

### Unpaid 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 testimony offered by both parties that the tenancy agreement required the tenant to pay monthly rent of \$4,500.00 on the first day of the month.

I accept the testimony offered by both parties that the tenant did not pay rent in July, August, September, October and November 2020.

As such, I find the tenant is in rental arrears and I award the landlord \$22,500.00 for the unpaid rent of July, August, September, October and November 2020.

#### Legal fees

The Act only provides for the recovery of the filing fee for the application, per section 72(1). Legal fees are not recoverable under the Act.

Thus, I dismiss the landlord's claim for compensation for legal fees.

#### Bailiff expenses

Based on the landlord's uncontested testimony and the bailiff receipt, I find the tenant did not comply with the order of possession to vacate the rental unit. The tenant only vacated the rental unit after the landlord paid the bailiff cost. I find the landlord incurred a loss in the total amount of \$335.31 because of the tenant's failure to comply with the order of possession and I award compensation for this loss.

#### Deposit

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

As the tenant did not provide her forwarding address in writing, the timeframe of section 38(1) did not start.

I find the landlord's testimony more convincing than the tenant's testimony. Based on the landlord's testimony, I find the tenant did not authorize the landlord to retain the deposit to offset the unpaid rent.

As explained in section D.2 of Policy Guideline #17, the Residential Tenancy Act provides that where an arbitrator orders a party to pay any monetary amount or to bear all or any part of the cost of the application fee, the monetary amount or cost awarded to a landlord may be deducted from the security deposit held by the landlord and the monetary amount or cost awarded to a tenant may be deducted from any rent due to the landlord. Thus, I order the landlord to retain the tenant's deposit of \$2,250.00 in partial satisfaction of the monetary award granted.

#### Filing fee and summary

Per section 72(1) of the Act, the applicant can be authorized to recover the filing fee paid for the application in the amount of \$100.00.

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

In summary:

Item	Amount \$
July, August, September, October and November 2020	22,500
Bailiff expenses	335.31
Filing fee	100.00
Minus deposit	2,250.00 (subtract)
<b>Total monetary award</b>	<b>20,685.31</b>

#### Conclusion

Pursuant to sections 26, 38, 67 and 72 of the Act, I authorize the landlord to retain the \$2,250.00 deposit and grant the landlord a monetary order in the amount of \$20,685.31.

The landlord is provided with this order in the above terms and the tenant must be served with this order in accordance with the Act. Should the tenant 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: August 24, 2021

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Residential Tenancy Branch