



# 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* ("Act") for:

- authorization to obtain a return of double the amount of the tenant's security deposit, pursuant to section 38;
- a monetary order for compensation under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement, pursuant to section 67; and
- authorization to recover the filing fee for this application, pursuant to section 72.

Both parties attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. This hearing lasted approximately 41 minutes from 1:30 p.m. to 2:11 p.m.

At the outset of this hearing, I informed both parties that recording of this hearing was not permitted by anyone, as per Rule 6.11 of the Residential Tenancy Branch ("RTB") *Rules of Procedure*. Both the landlord and tenant affirmed, under oath, that they would not record this hearing.

At the outset of this hearing, I explained the hearing and settlement processes to both parties. Both parties had an opportunity to ask questions. Both parties affirmed that they were ready to proceed with this hearing, they did not want to settle this application, and they wanted me to make a decision.

The landlord confirmed receipt of the tenant's application for dispute resolution hearing package. In accordance with sections 89 and 90 of the *Act*, I find that the landlord was duly served with the tenant's application.

The landlord confirmed that he did not submit any documentary evidence for this hearing.

Pursuant to section 64(3)(c) of the *Act*, I amend the tenant's application to correct the spelling of the landlord's surname and to correct the rental unit address. The tenant filed an RTB amendment form requesting the correction to the landlord's surname. The landlord confirmed the correct spelling of his surname and the correct rental unit address during this hearing. I find no prejudice to either party in making these amendments.

### Issues to be Decided

Is the tenant entitled to a return of double the amount of her security deposit?

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

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

### Background and Evidence

While I have turned my mind to the tenant's documentary evidence and the testimony of both parties, not all details of the submissions and arguments are reproduced here. The relevant and important aspects of the tenant's claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on November 1, 2017 and ended on November 30, 2020. Monthly rent in the amount of \$1,500.00 was payable on the first day of each month. A security deposit of \$750.00 was paid by the tenant and the landlord continues to retain this deposit in full. A written tenancy agreement was signed by both parties. Move-in and move-out condition inspection reports were not completed for this tenancy. The tenant provided a written forwarding address by way of a letter to the landlord on November 20, 2020. The landlord did not file an application for dispute resolution to retain the tenant's security deposit. The landlord did not have written permission to retain any amount from the tenant's security deposit.

The tenant seeks a return of double the amount of her security deposit of \$750.00, totalling \$1,500.00, plus \$1,060.00 for hydro costs, and the \$100.00 application filing fee.

The tenant testified regarding the following facts. She received a text message from the landlord on September 24, 2020, asking her to turn the hydro power back on because the landlord was using it. Her power breaker was always on, it was never off. She realized in September 2020, that the landlord had been using her hydro for the entire tenancy of three years, based on his text message. The landlord should have to pay her a portion of her hydro bills, for which she provided a one-page summary document. She was previously asking for \$35.00 per month, for a total of 36 months, totalling \$1,260.00. The average hydro costs were \$150.00 per month, divided by three people, including the tenant and her co-tenant, so the landlord would owe \$50.00 per month. Since the tenant cannot track the landlord's usage of the hydro, she is only asking for \$35.00 per month. The tenant agreed that the landlord could use her hydro for one month in September 2020, but the landlord had three buildings connected to the tenant's hydro. She saw the landlord using his generator at the rental property. The landlord gave the tenant \$200.00 off from rent in September 2020, to use hydro from September to October 2020. The tenant now seeks \$1,060.00 for hydro costs, after reducing her original claim of \$1,260.00 by \$200.00, based on the payment by the landlord for hydro in September and October 2020. The landlord allowed her to pay a reduced rent of \$1,000.00 in October 2020, based on a verbal agreement from August 27, 2020, for the tenant to stay at the rental unit for six months. The landlord gave her a Two Month Notice to End Tenancy for Landlord's Use of Property ("2 Month Notice") for her to move out on December 1, 2020. She was entitled to free rent in November 2020, as per the 2 Month Notice, so she did not pay rent that month to the landlord.

The landlord testified regarding the following facts. He and his wife lived at a different property during the tenant's tenancy. He was out of province with his wife and he worked out of town in the winter. On September 19, 2020, he moved his RV trailer onto the rental property, and used the tenant's hydro intermittently for one or two days. He did not use any other hydro during the tenant's entire tenancy of three years. The tenant turned the breaker off, so he asked her to turn it back on and she refused. He did not pursue it because the tenant was moving out at the end of November 2020. The landlord used a generator until the tenant moved out and his neighbours saw him do so. He did not know he was required to give the tenant one month of free rent, pursuant to the 2 Month Notice he issued to her, so he kept the tenant's security deposit towards November 2020 rent. He is willing to return the \$750.00 security deposit to the tenant because he knows now that she is entitled to one month of free rent for November

2020. He allowed the tenant to pay a reduced rent of \$1,300.00 for September 2020 and \$1,000.00 for October 2020, based on a verbal agreement, so that she did not have to pay the required \$1,500.00 rent, as per the tenancy agreement.

### Analysis

#### Security Deposit

Section 38 of the *Act* requires the landlord to either return the tenant's security deposit or file for dispute resolution for authorization to retain the deposit, within 15 days after the later of the end of a tenancy and the tenant's provision of a forwarding address in writing. If that does not occur, the landlord is required to pay a monetary award, pursuant to section 38(6)(b) of the *Act*, equivalent to double the value of the deposit. However, this provision does not apply if the landlord has obtained the tenant's written authorization to retain all or a portion of the deposit to offset damages or losses arising out of the tenancy (section 38(4)(a)) or an amount that the Director has previously ordered the tenant to pay to the landlord, which remains unpaid at the end of the tenancy (section 38(3)(b)).

On a balance of probabilities, I make the following findings based on the undisputed testimony of both parties. The tenancy ended on November 30, 2020. The tenant provided a written forwarding address to the landlord by way of a letter on November 20, 2020, which the landlord received. The tenant did not give the landlord written permission to retain any amount from her security deposit. The landlord did not return the security deposit or make an application for dispute resolution to claim against it.

The landlord continues to hold the tenant's security deposit of \$750.00. No interest is payable on the deposit during the period of this tenancy. In accordance with section 38(6)(b) of the *Act* and Residential Tenancy Policy Guideline 17, I find that the tenant is entitled to receive double the value of her security deposit of \$750.00, totaling \$1,500.00.

#### Hydro Claim and Filing Fee

Pursuant to section 67 of the *Act*, when a party makes a claim for damage or loss, the burden of proof lies with the applicant to establish the claim. To prove a loss, the tenant must satisfy the following four elements on a balance of probabilities:

1. Proof that the damage or loss exists;
2. Proof that the damage or loss occurred due to the actions or neglect of the landlord in violation of the *Act*, *Regulation* or tenancy agreement;
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
4. Proof that the tenant followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

On a balance of probabilities and for the reasons stated below, I dismiss the tenant's application for \$1,060.00, without leave to reapply. I find that the tenant failed the above four-part test.

I find that the tenant failed to show that the landlord was using the tenant's hydro for the entire tenancy of over three years, from November 1, 2017 to November 30, 2020. I accept the landlord's testimony that he was living at a different property, he was out of province, and he was working in a different area, during the tenant's tenancy, so he did not use her hydro. I accept the landlord's testimony that he used only one to two days of the tenant's intermittent hydro when he moved his RV onto the rental property on September 19, 2020. I accept the testimony of the landlord that he used a generator to get hydro to his RV until the tenant moved out on November 30, 2020, as the tenant testified that she saw him using the generator.

I find that the tenant agreed to \$200.00 in compensation from the landlord, for him to use the hydro at the rental property. The tenant paid a reduced rent of \$1,300.00 in September 2020. I find that the \$200.00 amount is more than sufficient for the landlord's limited and intermittent use of the tenant's hydro for one to two days. I also find that the tenant failed to notify the landlord of this alleged hydro usage until November 20, 2020, when she provided her forwarding address to move out. The tenant also failed to file a claim at the RTB until April 1, 2021, regarding this hydro usage. This is despite the fact that the tenant claimed that she found out about the landlord's hydro usage in September 2020.

I find that the tenant failed to provide sufficient proof of the \$1,060.00 amount that she claimed. She was unable to track any hydro usage by the landlord. She did not provide any of her hydro invoices or receipts for this tenancy. The tenant provided a one-page electric billing history document, which shows the "total charges," not the amounts paid by the tenant. The bottom of the document specifically states the following (my emphasis added):

*Please note that the Account History Report is a tool for tracking consumption levels and estimating certain energy efficiency measures and **may not be an exact reflection of your billing. Your BC Hydro Invoice provides you with the most current, verified data available.***

As the tenant was only partially successful in this application, I find that she is not entitled to recover the \$100.00 filing fee from the landlord. This claim is dismissed without leave to reapply.

### Conclusion

I issue a monetary Order in the tenant's favour in the amount of \$1,500.00 against the landlord. 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: September 02, 2021

---

Residential Tenancy Branch