



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDCL-S, MNDL-S, OPC, FFL, MNRL-S

### 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:

- an order of possession under a One Month Notice to End Tenancy for Cause (the Notice), pursuant to sections 47 and 55;
- 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), under section 38; and
- an authorization to recover the filing fee, under section 72.

I left the teleconference connection open until 11:27 A.M. to enable the tenant to call into this teleconference hearing scheduled for 11:00 A.M. The tenant did not attend the hearing. The landlord attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the landlord and I were the only ones who had called into this teleconference.

At the outset of the hearing the attending party affirmed he understands it is prohibited to record this 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."

Preliminary Issue – Service of the application

The landlord affirmed he served the notice of hearing and the evidence (the materials) by registered mail on September 22, 2021. The tracking number is recorded on the cover page of the decision. The evidence included the September 13, 2021 monetary order worksheet.

Section 89(2) of the Act states:

An application by a landlord under section 55 [order of possession for the landlord], 56 [application for order ending tenancy early] or 56.1 [order of possession: tenancy frustrated] must be given to the tenant in one of the following ways:

(a) by leaving a copy with the tenant;

**(b) by sending a copy by registered mail to the address at which the tenant resides;**

(c) by leaving a copy at the tenant's residence with an adult who apparently resides with the tenant;

(d) by attaching a copy to a door or other conspicuous place at the address at which the tenant resides;

(e) as ordered by the director under section 71 (1) [director's orders: delivery and service of documents];

(f) by any other means of service provided for in the regulations.

(emphasis added)

I accept the landlord's testimony that the tenant was served with the materials by registered mail on September 22, 2021, in accordance with section 89(2)(b) of the Act.

Section 90 of the Act provides that a document served in accordance with Section 89 of the Act is deemed to be received if given or served by mail, on the 5th day after it is mailed. Given the evidence of registered mail the tenant is deemed to have received the materials on September 27, 2021, in accordance with section 90 (a) of the Act.

Rule of Procedure 7.3 allows a hearing to continue in the absence of the respondent.

The landlord received an email from the rental building manager on October 08, 2021 informing that the tenant scheduled his move out for October 13, 2021. The landlord received a second email from the rental building manager on October 13, 2021 confirming that the tenant moved out on that day. The landlord called and texted the tenant after October 13, 2021, but only received a text message from the tenant on November 02, 2021 confirming that he moved out and that the keys were in the rental unit. The landlord did not receive the forwarding address.

The landlord served a second package of evidence by registered mail on December 06, 2021, including the December 05, 2021 monetary order worksheet. Both packages were mailed to the rental unit's address.

The landlord affirmed that a Residential Tenancy Branch officer informed him that he could serve evidence documents to the last known address of the tenant.

Residential Tenancy Branch Policy Guideline 12 (March/2021) states:

3. SPECIAL REQUIREMENTS FOR SERVICE OF DOCUMENTS for:

- An application for dispute resolution
- except for applications by a landlord for an order of possession or an order ending a tenancy early
- A Residential Tenancy Branch decision to proceed with a review of a Decision

[...]

There are only four methods of service that may be used for these matters. These are:

Personal service

o Where a tenant is personally serving a landlord, the tenant must serve a document by leaving a copy of it with the landlord or an agent of the landlord.

o Where a landlord is personally serving a tenant, the landlord must serve by leaving a copy with the tenant. In cases where there are multiple tenants, the landlord must serve a copy to each co-tenant separately.

This requires physically handing a copy of the document to the person being served. If the person declines to take the document, it may be left near the person so long as the person serving informs the person being served of the nature of the document being left near them.

Registered Mail

o Where a tenant is serving a landlord by Registered Mail, the address for service must be where the landlord resides at the time of mailing or the address at which the landlord carries on business as a landlord. See "Service of documents on an incorporated company or society" in section 6 below or "Serving documents at the address at which the landlord carries on business as a landlord" in section 7 below.

o **Where a landlord is serving a tenant by Registered Mail, the address for service must be where the tenant resides at the time of mailing, or the forwarding address provided by the tenant.** Registered Mail includes any method of mail delivery provided by Canada Post for which confirmation of delivery to a named person is available. This includes Express post, if the signature option is used. Parties using Registered Mail or Express Post should obtain a copy of the proof of delivery from Canada Post and submit that document as proof of service. This can be obtained from Canada Post's website. A screen shot or picture of the information is sufficient.

Email service

o To serve documents by email, the party being served must have provided an email address specifically for the purposes of being served documents. If there is any doubt about whether an email address has been given for the purposes of giving or serving documents, an alternate form of service should be used, or an order for substituted service obtained.

A Residential Tenancy Branch Order Regarding Service

o See "Orders for substituted service" in section 13 below and "Proof of service" in section 14 below.

(emphasis added)

The landlord must serve the evidence to the tenants' current address. The landlord confirmed he was aware that the tenant moved out on October 13, 2021 and mailed the second package of evidence on December 06, 2021.

I find the landlord did not serve the December 06, 2021 evidence package in accordance with section 89 of the Act. Thus, I'm excluding the package mailed on December 06, 2021.

### Preliminary Issue – Vacant Rental Unit

The application for an order of possession is moot since the tenancy has ended and the tenant left the rental unit.

Section 62(4)(b) of the Act states an application should be dismissed if the application or part of an application for dispute resolution does not disclose a dispute that may be determined under the Act. I exercise my authority under section 62(4)(b) of the Act to dismiss the application for an order of possession.

### 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?

I note the September 13, 2021 monetary order worksheet indicates 2 claims:

01. Bank statement. Receipt of the security deposit: \$1,450.00.
02. Strata fine: \$575.25.

The landlord affirmed that he would like to have an authorization to retain the deposit because of the damages caused by the tenant.

### Background and Evidence

While I have turned my mind to the accepted evidence and the testimony of the attending party, 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 party; it is the landlord's obligation to present the evidence to substantiate the application.

The landlord affirmed the tenancy started on March 01, 2021. Monthly rent was \$2,900.00, due on the first day of the month. At the outset of the tenancy a deposit of \$1,450.00 was collected and the landlord holds it in trust. The tenancy agreement was submitted into evidence. It states:

20. The Tenant shall be liable to the Landlord for all injury, damage, costs or expenses caused by the infraction of any of the foregoing rules and regulations.

The landlord is claiming \$575.25 for compensation for strata damages, as the tenant damaged a glass panel in the rental building in the first week of July 2021. The landlord submitted into evidence an invoice in the amount of \$575.25 and a letter from the strata dated July 12, 2021:

You are alleged to be in violation of the Bylaw of the Strata Corporation. The details of the alleged contravention are as follows:

It was noted that Accurate Glass attended the building to replace the damaged sidelite GPW glass door within the parkade.

Invoice [redacted for privacy] is attached for your reference.

The landlord served the strata letter to the tenant, the tenant affirmed he would pay this amount but did not pay it. The landlord paid this amount on August 03, 2021 (receipt submitted).

### 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.

Section 32(3) of the Act states:

(3)A tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.

Based on the convincing, coherent and undisputed landlord's testimony, the strata letter, the invoice and the receipt, I find, on a balance of probabilities, the tenant breached section 32(3) of the Act and clause 20 of the tenancy agreement by damaging a glass panel in the rental building and the landlord incurred a loss of \$575.25.

Thus, I award the landlord the amount of \$575.25 for this loss.

Pursuant to section 72 of the Act, I authorize the landlord to recover the \$100.00 filing fee.

In summary, the landlord is awarded \$675.25.

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 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.

### Conclusion

Pursuant to sections 67 and 72 of the Act, I award the landlord \$675.25 and authorize the landlord to retain \$675.25 from the deposit in total satisfaction of the amount awarded.

The landlord should address the remainder of the deposit in accordance with section 38 of the Act.

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: January 27, 2022

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Residential Tenancy Branch