



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Dispute Codes:**

MNRL-S, FFL

### **Introduction**

This hearing was convened in response to the Landlord's Application for Dispute Resolution, in which the Landlord applied for a monetary Order for unpaid rent or utilities, to retain all or part of the security/pet damage deposit, and to recover the fee for filing this Application for Dispute Resolution.

The Agent for the Landlord stated that on July 29, 2021 the Dispute Resolution Package and evidence submitted to the Residential Tenancy Branch on June 17, 2021 was sent to the Tenant, via registered mail. The Tenant acknowledged receipt of these documents and the evidence was accepted as evidence for these proceedings.

On January 06, 2022 the Tenant submitted evidence to the Residential Tenancy Branch. The Tenant stated that this evidence was served to the Landlord, via email, on the morning of January 11, 2021. Residential Tenancy Branch Rules of Procedure require Respondents to serve evidence to the other party no later than one week prior to the hearing. As the Tenant's evidence was not served to the Landlord until the morning of the hearing, it was not accepted as evidence for these proceedings.

The participants were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. Each participant affirmed that they would speak the truth, the whole truth, and nothing but the truth during these proceedings.

The participants were advised that the Residential Tenancy Branch Rules of Procedure prohibit private recording of these proceedings. Each participant affirmed they would not record any portion of these proceedings.

Issue(s) to be Decided

Is the Landlord entitled to a monetary Order for unpaid rent and to retain all of part of the security/pet damage deposit?

Background and Evidence

The Agent for the Landlord and the Tenant agree that:

- this tenancy began on June 15, 2021;
- the Tenant agreed to pay monthly rent/parking of \$1,588.00 by the first day of each month;
- the Tenant paid a security deposit of \$749.00;
- the Tenant paid a pet damage deposit of \$749.00;
- the tenancy ended on May 31, 2021;
- the Tenant provided a forwarding address, via email, on June 15, 2021; and
- the Tenant still owes \$43.00 in rent from January of 2021.

The Landlord is claiming compensation for unpaid rent from January of 2021, October of 2020, and July of 2020.

The Agent for the Landlord and the Tenant agree that no rent was paid for October of 2020.

The Tenant stated that no rent was paid for October of 2020 because the Agent for the Landlord told him that rent for October was being waived in compensation for the Tenant being without a washer and dryer for an extended period of time. The Agent for the Landlord stated that he did not waive rent for the month of October of 2020.

The Agent for the Landlord stated that the Tenant still owes \$246.00 in rent from September of 2020.

The Tenant stated that:

- he withheld \$250.00 from his rent for September of 2020
- he was promised a \$250.00 rent reduction if he referred a new tenant to the Landlord;

- a female agent for the Landlord, whom he knows only by her first name, promised him the \$250.00 rent reduction;
- he referred his brother to the Landlord, who became a tenant “around July of 2020”; and
- he recovered the promised rent reduction by withholding \$250.00 from his rent in September of 2020.

The Agent for the Landlord stated that:

- the Tenant’s brother became a tenant on June 18, 2020;
- the female who allegedly offered the rent reduction was an agent for the Landlord in June of 2020;
- and there is no written record of this rent reduction being offered to the Tenant; and
- the Landlord purchased this residential complex on June 29, 2020.

### Analysis

On the basis of the undisputed evidence, I find that the Tenant entered into a tenancy agreement that required the Tenant to pay monthly rent of \$1,588.00 by the first day of each month, which includes parking fees.

Section 26 of the *Residential Tenancy Act (Act)* requires tenants to pay rent when it is due, whether or not the landlord complies with the *Act* or the tenancy agreement, unless the tenant has a right under the Act to deduct all or a portion of the rent.

On the basis of the undisputed evidence, I find that the Tenant did not pay \$43.00 of the rent that was due on January 01, 2021 and that this money is, therefore, still due to the Landlord.

On the basis of the undisputed evidence, I find that the Tenant did not pay \$1,588.00 in rent for October of 2020.

When a tenant alleges that the tenant is excused from paying all or part of the rent for any period of time, the tenant bears the burden of proving that submission.

In the case of verbal testimony when one party submits their version of events and the other party disputes that version, it is incumbent on the party bearing the burden of

proof to provide sufficient evidence to corroborate their version of events. In the absence of any documentary evidence to support their version of events or to doubt the credibility of the parties, the party bearing the burden of proof would fail to meet that burden.

I find that there is insufficient evidence to establish that the Landlord waived the Tenant's obligation to pay rent for October of 2020. In reaching this conclusion I was heavily influenced by the absence of evidence to corroborate the Tenant's testimony that rent for October was waived and it was directly refuted by the Agent for the Landlord's testimony who allegedly offered to waive the rent.

As there is insufficient evidence to establish that the Tenant was not required to pay rent for October of 2020, I find that he must pay \$1,588.00 in rent for that month.

On the basis of the evidence submitted by the Landlord, I find that the Tenant did not pay all of the rent for September of 2020.

I find there is insufficient evidence to disregard the Tenant's testimony that he was granted a \$250.00 rent reduction because he referred his brother to the Landlord, who was subsequently accepted as a tenant. I find this submission has a "ring of truth" to it, given that his brother became a tenant in the residential complex in the summer of 2020. As the Landlord did not submit any evidence from the female agent for the Landlord who allegedly offered the \$250.00 rent reduction and there is a "ring of truth" to the Tenant's testimony, I find that he had the right to withhold \$250.00 from his rent for September of 2020.

In determining that the Tenant was granted a rent reduction of \$250.00, I placed little weight on the Landlord's submission that there was no written record of this rent reduction. On the basis of the Agent for the Landlord's testimony that the Landlord purchased this residential complex on June 29, 2020, I find that such written records could easily have been lost during the transition of ownership.

As I have concluded that the Tenant had the right to reduce his rent for September of 2020 by \$250.00, I dismiss the Landlord's claim for unpaid rent from September of 2020.

I find that the Landlord's application has merit and that the Landlord is entitled to recover the cost of filing this Application for Dispute Resolution.

Conclusion

The Landlord has established a monetary claim, in the amount of \$1,731.00, which includes \$1,631.00 in unpaid rent and \$100.00 in compensation for the fee paid to file this Application for Dispute Resolution. Pursuant to section 72(2) of the *Act*, I authorize the Landlord to keep the Tenant's security/pet damage deposit of \$1,498.00, in partial satisfaction of the monetary claim.

Based on these determinations I grant the Landlord a monetary Order for the balance of \$233.00. In the event that the Tenant does not comply with this Order, it may be served on the Tenant, filed with the Province of British Columbia Small Claims 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 *Act*.

Dated: January 12, 2022

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Residential Tenancy Branch