



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes**      **MNSDS-DR, FFT**

### **Introduction**

This hearing, reconvened from a Direct Request proceeding, dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- authorization to obtain a return of all or a portion of the security deposit pursuant to section 38; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

The landlord did not attend this hearing which lasted approximately 12 minutes. The teleconference line remained open for the duration of the hearing and the Notice of Hearing was confirmed to contain the correct hearing information. The tenant attended and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

The tenant testified that they served the landlord with the notice of hearing and all materials, initially by registered mail and subsequently by email to an address provided by the landlord. The landlord has submitted to the Branch various documentary materials, most recently an appointment of an agent to represent them on June 6, 2022 referencing the file number for this application. Based on the evidence I find the landlord sufficiently served with all of the tenant's materials in accordance with section 71(2)(c) of the *Act*.

Issue(s) to be Decided

Is the tenant entitled to an award as claimed?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony, not all details of the submissions and arguments are reproduced here. The principal aspects of the claim and my findings around each are set out below.

The tenant provided undisputed evidence regarding the following facts. This fixed-term tenancy began on January 1, 2021 and was scheduled to end on January 1, 2022. Monthly rent was \$2,200.00 payable on the first of each month. A security deposit of \$1,100.00 was paid at the start of the tenancy.

By a Decision of the Ontario Court dated February 8, 2021 the tenant was ordered to return their infant child to the Province of Ontario by February 28, 2021.

The Order states in relevant part:

The Mother's decision to move to British Columbia after commencing these proceedings with no concrete plan in place was made for an improper purpose: to prevent the Father from having a relationship with the child.

...

The Mother's decision to move with T, only an infant, across the country in the middle of a pandemic with no plans in place or family supports calls into question her judgement as a parent. These are difficult times for all of us. Canadians have been asked to put their lives on hold in many ways, giving up our daily routines and social interactions. Not only did the Mother act in her own self interest by disregarding directives, but by travelling with her young child she put herself and the child to uncertainty and unnecessary health risks. In her own Affidavit of January 22, 2021, she herself acknowledges that ... "Since moving to British Columbia it has been a struggle"...

...

I am allowing [the tenant] almost three weeks to return to Ontario, so that she can take time to arrange the safest possible travel for herself and [the child]

The tenant first gave notice to end the tenancy by a text message on February 23, 2021. Despite the short notice, the landlord proposed a number of dates and times to schedule the move-out inspection. The tenant stated that they would not be able to attend at any of the times suggested by the landlord, did not propose any alternative times and vacated the rental unit on February 26, 2021.

The landlord attempted to contact and schedule an alternate time for an inspection but the tenant indicated they would not be returning to the rental unit. The landlord ultimately performed an inspection in the absence of the tenant on February 28, 2021.

The tenant gave the landlord their forwarding address on May 4, 2021. The tenant testified that the landlord has returned \$80.00 of their security deposit.

The tenant now seeks a monetary award of \$2,200.00 double the security deposit paid for this tenancy.

### Analysis

Section 36(1) of the *Act* provides that the right of a tenant to claim against a security deposit is extinguished if the landlord provides them with at least 2 opportunities to perform a move out inspection and the tenant does not participate.

Regulation 17 provides the manners in which an opportunity for inspection may be proposed and states in relevant parts:

- 17** (1) A landlord must offer to a tenant a first opportunity to schedule the condition inspection by proposing one or more dates and times.
- (2) If the tenant is not available at a time offered under subsection (1),
- (a) the tenant may propose an alternative time to the landlord, who must consider this time prior to acting under paragraph (b), and
  - (b) the landlord must propose a second opportunity, different from the opportunity described in subsection (1), to the tenant by providing the tenant with a notice in the approved form.

In the present case, based on the documentary evidence and the undisputed testimony of the tenant I find that the landlord proposed one or more dates and times for a move-out inspection in accordance with Regulation 17(1). I accept that the tenant declined all

of those times, did not propose an alternative time and left the rental property. I am satisfied with the evidence that the landlord has provided the tenant with multiple opportunities for an inspection and the tenant failed to participate.

I further find that the conduct of the tenant, in vacating the rental unit without sufficient notice and indicating that they are not expected to return may accurately be characterized as abandonment of the property.

Section 35(5) of the *Act*, provides that:

(5) The landlord may make the inspection and complete and sign the report without the tenant if

(a) the landlord has complied with subsection (2) and the tenant does not participate on either occasion, or

(b) the tenant has abandoned the rental unit.

Under the circumstances, I find that the landlord has offered the tenant opportunities to participate in a move-out inspection as required under the *Act* and Regulations and the tenant has subsequently abandoned the rental unit. I find that the tenant has extinguished their right to claim against any portion of the deposit for this tenancy.

Accordingly, I dismiss the tenant's present application in its entirety without leave to reapply.

### Conclusion

The tenant's application is dismissed in its entirety 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: June 9, 2022

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Residential Tenancy Branch