



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

<u>Dispute Codes</u>	For the landlord:	MND-S, MNDC-S, FF
	For the tenant:	MNSD, FF

Introduction

This hearing convened by teleconference on February 28, 2022, to deal with the parties' respective applications for dispute resolution seeking remedy under the Residential Tenancy Act (Act).

The landlord applied on August 14, 2021, for compensation for alleged damage to the rental unit by the tenant, compensation for a monetary loss or other money owed, and recovery of the cost of the filing fee.

The tenant applied on October 4, 2021, for a return of her security deposit from the landlord, doubled, and recovery of the cost of the filing fee.

The hearing began on February 28, 2022, and both parties and the landlord's witness were in attendance. The parties were affirmed and were advised that recording of the hearing is prohibited.

The tenant said she received the landlord's evidence. The landlord denied receiving the tenant's evidence.

The hearing began and after 62 minutes, it was clear there was insufficient time to conclude all of the issues in dispute in the time allotted. The hearing was adjourned.

An Interim Decision was issued on March 3, 2022, in which the hearing was adjourned to a date and time set by the Residential Tenancy Branch (RTB). The Interim Decision is incorporated by reference and should be read in conjunction with this Decision.

Evidence issues were dealt with in the Interim Decision and orders were given to both parties to correct and/or submit during the period of adjournment. The tenant was ordered to re-serve her evidence to the landlord by email within 14 days of the Interim Decision and I ordered the landlord to acknowledge receipt of the email and for the tenant to provide that acknowledgment.

Notices of the reconvened hearing and Interim Decision were emailed to the parties on March 8, 2022.

At the reconvened hearing on June 7, 2022, the tenant attended. The landlord, who is represented by her POA/daughter, did not attend.

Preliminary and Procedural Matters-

As to the landlord's application, RTB Rules 7.1 and 7.3 apply and state:

7.1 Commencement of the dispute resolution hearing

The dispute resolution hearing will commence at the scheduled time unless otherwise set by the arbitrator.

7.3 Consequences of not attending the hearing

If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply.

Given the above, I find the landlord failed to attend the entire proceeding by failing to attend the reconvened hearing on June 7, 2022. As a result, I **dismiss the landlord's application, without leave to reapply.**

Additionally, I find the landlord failed to comply with the Interim Decision. I ordered the landlord to acknowledge receipt of the tenant's re-served evidence. The tenant submitted proof that she emailed her evidence to the landlord but that the landlord failed to provide acknowledgment of receipt.

Based on the undisputed evidence of the tenant, I find the tenant served the landlord her evidence and I further find the landlord was sufficiently served with the tenant's evidence.

As a result, I allowed the tenant's evidence for consideration for this dispute.

The hearing proceeded on the tenant's application for dispute resolution.

I have reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch Rules of Procedure (Rules). However, not all details of the parties' respective submissions and or arguments are reproduced here; further, only the evidence specifically referenced by the parties and relevant to the issues and findings in this matter are described in this Decision.

Words utilizing the singular shall also include the plural and vice versa where the context requires.

Issue(s) to be Decided

Is the tenant entitled to a monetary order comprised of her security deposit, doubled, and recovery of the cost of the filing fee?

Background and Evidence

The tenancy began on November 1, 2020 and ended on July 31, 2021. The tenant submitted she vacated the rental unit on July 30, 2021. The monthly rent was \$1,399 and the tenant paid a security deposit of \$699.50.

In their application, the landlord submitted an invoice from a cleaning service, which showed a cleaning fee of \$337.28. The landlord testified at the initial part of the hearing that she withheld the cleaning fee and the application filing fee of \$100 from the tenant's security deposit and returned the balance of the tenant's security deposit, or \$226.60.

The tenant's monetary claim is \$1,399, which the tenant submitted in explanation in their application as follows:

The 15 day time period has passed I would like to request double my deposit in return. The landlord had requested the move out walk through at 1pm on july 31. On july 31 at 8am she then changed her mind to go out of town on vacation instead. I notified her that i was not available past the end of my tenancy (july 31). She then decided to pretend she had never set the time and serve me with

false documentation requesting walk throughs at times I had already told her I was unavailable.

[Reproduced as written]

The tenant submitted that she provided her written forwarding address in an email to the landlord on July 31, 2021, because the landlord failed to attend their agreed upon scheduled final inspection on July 31, 2021. The tenant explained that she intended to provide her written forwarding address on the move-in condition inspection report (Report) on July 31, 2021. The landlord and the tenant provided the tenant's email showing the tenant's written forwarding address. The landlord submitted a photo of the registered mail envelope used for service of her application for dispute resolution using that forwarding address.

The tenant confirmed that she received a portion of her security deposit, and recalled the amount was around \$250. The tenant submitted that she did not agree to any deductions as the rental unit was left in a much cleaner state than she received it at the beginning of the tenancy. The tenant referred to her photographic evidence showing the condition of the rental unit at the end of the tenancy and a carpet cleaning receipt.

Analysis

Based on the documentary evidence and the undisputed testimony of the tenant provided during the hearing, and on the balance of probabilities, I find the following.

Under section 38(1) of the Act, a landlord is required to either repay a tenant's security deposit or to file an application for dispute resolution to retain the deposit within 15 days of the later of receiving the tenant's forwarding address in writing or at the end of a tenancy. Section 38(6) of the Act states that if a landlord fails to comply, or follow the requirements of section 38(1), then the landlord must pay the tenant double the amount of her security deposit.

In this case, I find the evidence shows that the landlord complied with their obligation under the Act.

The undisputed evidence is that landlord received the tenant's written forwarding address on July 31, 2021, and therefore had until August 15, 2021, to file their application. The landlord's application claiming against the tenant's security deposit was filed on August 14, 2021, according to the records at the RTB dispute resolution

system. The landlord was not provided the notice of hearing and associated dispute resolution documents to serve the tenant until September 1, 2021. The evidence shows that landlord attempted registered mail service to the tenant at that forwarding address, but the envelope was returned.

As I have dismissed the landlord's application claiming against the tenant's security deposit, I find the tenant is entitled to the return of the portion of her security deposit withheld by the landlord.

In this case, I find the landlord and the tenant provided miscalculations and contradictory testimony as to the exact amount the landlord returned to the tenant. However, both parties agree the landlord deducted the cleaning fee and the filing fee of \$100.

The landlord's receipt evidence shows the cleaning fee was \$337.28 and the filing fee was \$100. For this reason, I find the landlord deducted the amount of \$437.28 from the tenant's security deposit of \$699.50 and returned the amount of \$262.22.

I therefore **order** the landlord to return the remainder of the tenant's security deposit of **\$437.28**, which is the tenant's security deposit of \$699.50, from which the landlord deducted the cleaning fee of \$337.28 and the landlord's filing fee of \$100. I have not ordered the security deposit be doubled as the landlord filed their application within the required time as outlined above.

I grant the tenant recovery of their filing fee of \$100, due to her successful application.

I therefore find the tenant has established a monetary claim of **\$537.28**, comprised of the amount the landlord deducted from the tenant's security deposit of \$437.28 and the filing fee paid for this application of \$100.

I grant the tenant a monetary order in the amount of \$537.28.

Should the landlord fail to pay the tenant this amount without delay, the order must be served upon the landlord for enforcement and filed in the Provincial Court of British Columbia (Small Claims) for enforcement as an Order of that Court. The landlord is **cautioned** that costs of such enforcement are recoverable from the landlord.

Conclusion

The landlord's application is dismissed, without leave to reapply, due to their failure to attend the entire hearing.

The tenant's application is partially granted as I have ordered the landlord to return the amount of the funds withheld from the tenant's security deposit of \$437.28. I awarded the tenant recovery of her filing fee and granted the tenant a monetary order in the amount of \$537.28.

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*. Pursuant to section 77(3) of the Act, a decision or an order is final and binding, except as otherwise provided in the Act.

Dated: June 11, 2022

Residential Tenancy Branch