



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes**      FFT, MNSD, MNDCT, MNRT, RPP

### **Introduction**

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a monetary order for compensation for loss or money owed, and for the cost of emergency repairs already made under the *Act*, regulation or tenancy agreement pursuant to section 67;
- authorization to obtain a return of all or a portion of their security deposit pursuant to section 38;
- an order requiring the landlord to return the tenant's personal property pursuant to section 65; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. Both parties were clearly informed of the RTB Rules of Procedure about behaviour including Rule 6.10 about interruptions and inappropriate behaviour, and Rule 6.11 which prohibits the recording of a dispute resolution hearing. Both parties confirmed that they understood.

The landlord confirmed receipt of the tenant's dispute resolution application ('Application') In accordance with section 89 of the *Act*, I find that the landlord duly served with the Application. All parties confirmed receipt of each other's evidentiary materials and that they were ready to proceed with the hearing.

### **Issues(s) to be Decided**

Is the tenant entitled to a monetary order for compensation for loss or money owed under the *Act*, regulation or tenancy agreement?

Is the tenant entitled to an order requiring the landlord to return the tenant's personal property?

Is the tenant entitled to return of their security deposit?

Is the tenant entitled to recover the filing fee?

### **Background and Evidence**

While I have turned my mind to all the documentary evidence properly before me and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of this application and my findings around it are set out below.

This tenancy originally began as a fixed term tenancy on March 1, 2019, and continued on a month-to-month basis after February 29, 2020. The tenancy ended on September 27, 2021. Monthly rent was set at \$780.00, payable on the first of the month. The landlord had collected a security deposit in the amount of \$375.00, which the landlord still holds.

The tenant filed this application requesting an order for the landlord to return their personal property, and monetary orders totalling \$32,160.00. As the tenant did not provide a monetary order worksheet for their application, the tenant was asked to confirm and clarify their claims. The tenant requested the following orders:

- 1) Return of their security deposit of \$375.00
- 2) Return of rent of \$780.00 for 12 months \$9,360.00
- 3) Differential for a year's rent for new place  $(\$1,200.00 - 780.00 \times 12) = \$5,040.00$
- 4) Monetary Losses/Compensation for Harassment and Suffering \$7,700.00
- 5) Additional Compensation and Losses \$2,467.60 plus Moving Costs
- 6) Reimbursement of filing fee \$100.00

The tenant testified that they felt violated and harassed during this tenancy, and was eventually given an eviction notice by the landlord, and was removed. The tenant testified that they had recently lost their father to covid and felt violated by the manager CM. The tenant felt that CM had mocked the tenant's mental health was traumatised. The tenant felt unfairly targeted by the managers as they were paying less than market rent, and wanted to force the tenant out.

The tenant testified that after they were removed, the bailiff had removed their personal belongings, which was not returned to the tenant. The tenant requested an order for the return of these items. The tenant requested monetary compensation for these items if they cannot be returned. The tenant is also requesting the return of their security deposit that is still being held by the landlord.

The tenant testified that they suffer from post traumatic stress disorder as well as mobility issues, and should not have to personally attend another site to retrieve their belongings as they have no means to get there. The tenant testified that they had filed a human rights complaint, and was still awaiting a hearing date for this matter.

The tenant testified that they had felt bullied during this tenancy. The tenant testified that they had paid \$200.00 to \$300.00 for their garden, and then the landlord denied the tenant access to the garden. The tenant testified that they were attacked on a daily basis, and that the landlord's spouse CM had broken into the rental unit with a crowbar to terrorize the tenant. The tenant testified that they sleep naked, and was troubled by the fact that a man was inside the rental unit. The tenant testified that there was no emergency or urgent matter that necessitated the break in.

The landlord disputes the claims made in the tenant's application, noting that the tenant was removed by a bailiff after a writ of possession was obtained in Supreme Court. The landlord provided a copy of the Writ of Possession dated September 25, 2021. The landlord testified that they had the legal right to take possession of the rental unit after the tenant failed to vacate the rental unit after the landlord was granted an Order of Possession on September 15, 2021. The two parties had attended a hearing held on September 14, 2021 after which the landlord's 1 Month Notice to End Tenancy for Cause was upheld by an Arbitrator.

The landlord testified that the tenant's belongings were removed by the bailiff, and that they were unable to confirm the status or whereabouts of the tenant's belongings. The landlord believed that the bailiff had posted instructions on how to retrieve the belongings.

The landlord testified that the tenant has not provided a proper forwarding address, and confirmed that they still held the tenant's security deposit of \$375.00.

The landlord denies any harassment or bullying of the tenant during this tenancy by the landlord or their spouse CM. The landlord testified that they suffered monetary losses associated with this tenancy, but did not pursue them as they simply did not want to

deal with the tenant anymore. The landlord testified that the details referenced in this dispute was discussed at the last hearing, including the incident when CM had to enter the tenant's rental unit with a crowbar. The landlord testified that there was an emergency, and as the tenant had changed the locks, CM had to force entry into the rental unit in order to investigate and deal with the leak.

### **Analysis**

I must first note that the tenant references human rights violations that took place during this tenancy. Although the *Residential Tenancy Act* does allow tenants to file an application in relation to disputes between landlords and tenants, matters that pertain to human rights violations and complaints, even within a tenancy setting, do not fall under the jurisdiction of the RTB. The British Columbia Human Rights Tribunal exists to hear these complaints, and I decline to make any findings in relation to any allegations of human rights violations that took place during this tenancy. I note that the tenant has already filed a human right complaint, and is awaiting the next step in the process at the BC Human Rights Tribunal.

Section 38 (1) of the *Act* states that within 15 days of the latter of receiving the tenant's forwarding address in writing, and the date the tenant moves out, the landlord must either return the tenant's security deposit, or make an application for dispute resolution against that deposit.

In this case although the tenant has applied for the return of the security deposit, the landlord testified that they have yet to receive the tenant's forwarding address in writing. As I am not satisfied that the tenant has demonstrated provision of her forwarding address to the landlord in writing, I dismiss the tenant's application for the return of their security deposit with leave to reapply.

I will now consider tenant's application for monetary compensation and request for an order for the return of their personal property.

Under the *Act*, a party claiming a loss bears the burden of proof. In this matter the tenant must satisfy each component of the following test for loss established by **Section 7** of the *Act*, which states;

### ***Liability for not complying with this Act or a tenancy agreement***

**7** (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.*

The test established by Section 7 is as follows,

1. Proof the loss exists,
2. Proof the loss was the result, *solely, of the actions of the other party (the landlord)* in violation of the *Act* or Tenancy Agreement
3. Verification of the actual amount required to compensate for the claimed loss.
4. Proof the claimant (tenant) followed section 7(2) of the *Act* by taking *reasonable steps to mitigate or minimize the loss.*

Therefore, in this matter, the tenant bears the burden of establishing their claim on the balance of probabilities. The tenant must prove the existence of the loss, and that it stemmed directly from a violation of the tenancy agreement or a contravention of the *Act* on the part of the other party. Once established, the tenant must then provide evidence that can verify the actual monetary amount of the loss. Finally, the tenant must show that reasonable steps were taken to address the situation to *mitigate or minimize* the loss incurred.

The landlord does not dispute that the tenant's belongings were removed from the rental unit, but denies knowledge of the status or whereabouts of the tenant's personal belongings. The tenant requested compensation for the missing items as they were unable to retrieve them due to mobility issues. As noted above, the burden is on the applicant to support the value of the losses claimed. In consideration of the tenant's claims for compensation related the missing items, the tenant did not submit an itemized list of the personal property that the landlord is in possession of. As I am unable to determine what items the landlord still has, and the value of these items, I dismiss the tenant's application for the return of their personal property and associated compensation with leave to reapply.

The tenant also filed an application for a monetary order for reimbursement of their rent plus the rent differential for one year as the tenant felt that they were forced to vacate

the rental unit. In consideration of this claim, I find that the landlord had obtained the services of a bailiff to remove the tenant after obtaining a Writ of Possession. I find that the landlord was in possession of a valid and legal order to obtain vacant possession of the rental unit only after the tenant failed to abide by an Order of Possession to vacate within two days of being served the Order of Possession dated September 15, 2021. Section 57(1) of the *Act* defines an “overholding tenant” as a “tenant who continues to occupy a rental unit after the tenant’s tenancy is ended”. In this case I find that the tenant meets the definition of “overholding tenant” as the tenant continued to reside in the rental unit despite being ordered to vacate. I find that that this tenancy ended pursuant to a valid order, specifically a Writ of Possession issued under the Supreme Court Civil Rules, and accordingly, the tenant’s applications for reimbursement of their rent plus rent differential, as well as recovery of moving costs, are dismissed without leave to reapply.

I have considered the testimony and submissions of both parties about harassment and bullying that the tenant alleges took place during this tenancy, and I find that a significant amount of interaction has taken place between the tenant and the landlord’s agents during this tenancy, as documented by both parties and referenced in the previous hearing and decision. I am not satisfied, however, that the evidence presented supports that the landlord or their agents have contravened the *Act* in a manner that has caused the tenant a loss in the amounts claimed.

The tenant testified that they were harassed by CM, which involved a serious incident where CM had entered the tenant’s rental unit without proper notice, and which violated the tenant’s right to privacy and freedom from disturbance and harassment. The tenant testified that they slept naked, and were concerned that a male, CM, was inside their rental unit. The tenant described the impact this behaviour, as well as previous interactions, had on them. The landlord disputed these allegations, and argued that CM had lawfully entered the rental unit for emergency reasons as allowed under the *Act*.

In this case, I find that the amounts and issues referenced in the tenant’s application appear to be penalties that the tenant feels should be applied for the landlord’s non-compliance with the *Act* and legislation. Under section 87.3 of the *Act*, “Subject to the regulations, the director may order a person to pay a monetary penalty if the director is satisfied on a balance of probabilities that the person has

(a)contravened a provision of this Act or the regulations,

- (b) failed to comply with a decision or order of the director, or a demand issued by the director for production of records, or
- (c) given false or misleading information in a dispute resolution proceeding or an investigation.

I note that the Director has not delegated to me the authority to impose administrative penalties under section 87.3. That authority has been delegated to a separate unit of the Residential Tenancy Branch. The administrative process is separate from dispute resolution and if an administrative penalty is levied against a landlord. The Compliance and Enforcement Unit (CEU) is a team within the Residential Tenancy Branch, and the tenant may pursue the appropriate remedied through this process if they wish. As I do not have the delegated authority to administer any penalties under section 87.3 of the *Act*, I decline to make any orders under this section.

In consideration of any additional monetary claims for compensation for losses associated with the landlord's contravention of the *Act*, tenancy agreement, and legislation, I am not satisfied that the allegations of harassment and bullying are sufficiently supported in evidence, and definitely not to the extent that justifies the monetary claims for losses made by the tenant. As noted above, the party applying for dispute resolution bears the responsibility of demonstrating entitlement to a monetary award. I find that the tenant failed to support how they had calculated the amounts claimed, either referenced and supported by similar claims of this nature, or by providing pay stubs, receipts, statements, or written or oral testimony to support the losses the tenant is seeking in this application. Furthermore, I find that the tenant failed to establish how their suffering was due to the deliberate or negligent act or omission of the landlord or their agents. On this basis I dismiss the remainder of the tenant's monetary claims for losses without leave to reapply.

The filing fee is a discretionary award issued by an Arbitrator usually after a hearing is held and the applicant is successful on the merits of the application. As the tenant was unsuccessful with their application, I find that the tenant is not entitled to recover the \$100.00 filing fee paid for this application. The tenant must bear the cost of this filing fee.

### **Conclusion**

The tenant's application for the return of their personal property and security deposit are dismissed with leave to reapply.

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: June 9, 2022

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Residential Tenancy Branch