



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

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

### Introduction

This hearing dealt with an application by the tenant under the *Residential Tenancy Act* (the *Act*) for the following:

- An order for the landlord to return the security deposit pursuant to section 38;
- A monetary order for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement pursuant to section 67 of the *Act*;
- An order requiring the landlord to reimburse the tenant for the filing fee pursuant to section 72.

Both parties attended the hearing. Each party had opportunity to provide affirmed testimony, submit evidence and call witnesses.

No issues of service were raised, and I find each party served the other in compliance with the *Act*.

Each party confirmed they were not recording the hearing.

Each party provided the address to which the Decision shall be sent.

### *Preliminary Issue – Settlement*

I explained to the parties that under section 63 of the *Act*, the Arbitrator may assist the parties to settle their dispute. If the parties do so during the dispute resolution proceedings, the settlement may be recorded in the form of a Decision or an Order.

I explained to the parties that I do not provide legal or any advice. They could call the RTB Information Officers or consult the website for help and information. They could settle the issues outside or during the hearing.

The parties spent considerable time discussing possible settlement. They did not reach settlement.

Accordingly, the hearing continued.

### Issue(s) to be Decided

The tenant withdrew his request for reimbursement for repairs.

Is the tenant entitled to the remainder of the relief requested?

### Background and Evidence

The parties agreed on the background of the tenancy. A copy of the tenancy agreement was submitted.

The month-to-month tenancy started January 1, 2010, for monthly rent of \$1,025.00. The unit is a house with carport and a large shop. The tenant provided the landlord a security deposit of \$500.00 at the beginning of the tenancy which the landlord holds.

The dispute between the parties related to promise by the landlord to pay the tenant \$4,000.00 upon certain conditions and to the return of the security deposit.

### *Mutual Agreements to End Tenancy*

The landlord stated he had agreed to sell the property; a requirement of the sale was that the unit be empty. Accordingly, the parties entered into two Mutual Agreements to

End Tenancy, copies of both of which were submitted. Both are in the standard RTB form.

The first agreement was dated April 15, 2021, and provided that the landlord would pay the tenant \$4,000.00 if he moved out by September 1, 2021.

The second agreement was dated September 17, 2021 and changed the move-out date to October 1, 2021. The handwritten relevant portion stated:

The landlord [name] agrees to pay the tenant [name] CAD 4000.- if he moved out of the premise on time and the house and Property is cleaned up.

The parties agreed the tenant moved out three weeks late, either October 21 or 22, 2022.

The tenant argued the landlord is required to pay the \$4,000.00. He testified as follows. He was unable to comply with the move-out date of October 1, 2021, for several reasons: he had lived there for many years; he had numerous possessions; and he could not find replacement storage or living accommodation. The tenant called the landlord "almost every day" as he was packing to report on the progress. He always asked if he would still get the \$4,000.00 on move-out. The landlord always politely assured the tenant that he would pay the money even though the tenant was late.

The tenant called two witnesses who provided affirmed testimony regarding the phone calls between the parties. Each witness testified they worked with the tenant "24-7" to move out. Each witness said the tenant put the call on speaker when talking with the landlord. They reported that the tenant expressed concern to the landlord about the \$4,00.00 as he was aware he was late moving out. He repeatedly told the landlord he needed the money to move and find a new place. Each witnesses said the landlord regularly assured the tenant that he would pay the \$4,000.00 even though the moving out was delayed. The landlord reassured the tenant the landlord knew he was making his best efforts.

Upon moving out, the tenant met with the landlord expecting the return of the security deposit of \$500.00 and the \$4,000.00. He provided his forwarding address, a copy of which was submitted.

Instead, the landlord refused to pay the tenant.

The landlord claimed the tenant is not entitled to the \$4,000.00 The landlord said the agreement between the parties clearly stated the tenant was only entitled to the payment if he moved out on time. The tenant did not move out on time and is therefore not entitled to the payment.

The landlord denied reassuring the tenant that the landlord would honor the payment even if he were late. The landlord acknowledged he did not expressly tell the tenant that he would no longer be receiving the payment and believed this was obvious when the due date passed. He denied the phone calls took place in the way the tenant and his witnesses testified. The landlord called his wife BS who provided testimony that she heard the landlord's side of the calls and never heard him promise to pay the money when the tenant missed the deadline.

The tenant testified that without the payment from the landlord, he has been unable to find a place to live and is living in his fifth wheel.

The parties submitted no written documents about the agreement in the change of move-out date.

### *Security deposit*

As stated, the tenant testified he provided the landlord with his forwarding address upon moving out. A copy of the written address was submitted.

The tenant stated the landlord tore up the cheque for the return of the security deposit in front of him as the landlord believed the tenant did not leave the property in good condition. The landlord claimed that the tenant tore up the cheque and he provided a witness' written statement to that effect.

The landlord made no subsequent effort to return the security deposit. The landlord claimed he was under no obligation to attempt to return the security deposit to the tenant as the tenant moved out after October 1, 2021.

The landlord did not bring an application to retain the security deposit or for compensation for damages. He submitted pictures and a cleaning invoice to support his

claim that the tenant did not leave the unit in clean condition. The tenant denied this assertion and the witness BH said the unit was reasonably clean.

The tenant claimed the following:

ITEM	AMOUNT
Mutual Agreement - payment	\$4,000.00
Security deposit	\$500.00
Doubling of security deposit	\$500.00
Reimbursement filing fee	\$100.00
<b>TOTAL</b>	<b>\$5,100.00</b>

The landlord requested the tenant's claims be dismissed in their entirety without leave to reapply.

### Analysis

The parties submitted conflicting testimony in a lengthy 1-hour hearing. I do not reference all this evidence. Only key, relevant and admissible evidence in support of my findings is referred to.

As acknowledged by the parties, I find they entered into two Mutual Agreements to End Tenancy. Each of the agreements provided the landlord would pay the tenant \$4,000.00 if he moved out, first by September 1, 2021, and, in the second agreement, by October 1, 2021. I find the tenant moved out October 21 or 22, 2021. The relevant Mutual Agreement is the second Agreement.

The tenant seeks payment of the \$4,000.00 under the second Mutual Agreement as well as return of the security deposit of \$500.00.

### *Burden of Proof*

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 their case is on the person making the claim.

In this case, the onus is on the tenant to prove the tenant is entitled a claim for a monetary award.

The claimant (the tenant) bears the burden of proof to provide sufficient evidence to establish on a balance of probabilities all the following four points:

1. The existence of the damage or loss;
2. The damage or loss resulted directly from a violation – by the other party – of the Act, regulations, or tenancy agreement;
3. The actual monetary amount or value of the damage or loss; and
4. The claimant has done what is reasonable to mitigate or minimize the amount of the loss or damage claimed, pursuant to section 7(2) of the Act

Where the claiming party has not met each of the four elements, the burden of proof has not been met and the claim fails.

The above-noted criteria are based on sections 7 and 67 of the Act.

Section 7(1) of the Act provides that if a landlord or tenant does not comply with the Act, regulation or tenancy agreement, the non-complying party must compensate the other for damage or loss that results. Section 67 of the Act allows me to issue a monetary award for loss resulting from a party violating the Act, regulations, or a tenancy agreement.

These sections state as following:

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.

. . .

67. Without limiting the general authority in section 62 (3) [ . . . ] if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

### *Credibility*

I have considered the issue of credibility of the parties.

I find the landlord had an interest in encouraging the tenant to move out as quickly as possible. The property was being sold and a term was that the unit would be vacant. I find the landlord was using the \$4,000.00 as a “carrot”, that is, an incentive or motivation to encourage the tenant to vacate. I find the landlord tried to persuade the tenant to do what he wanted (move out quickly) and did not tell the tenant that he had no intention of making the payment after October 1, 2021. I find the landlord knew the tenant expected the payment and the landlord acquiesced to his understanding all the while having different, unexpressed intentions.

In consideration of the testimony and my findings, I find the tenant’s testimony to be the more reliable and believable. I accept the tenant’s testimony as supported by the witnesses BH and JB to be credible, matter of fact, and straightforward. I found their testimony to be convincing and reliable.

I find the landlord’s version of events to be less likely to be true. I give less weight to his testimony.

Therefore, where the parties’ testimony, differs, I give greater weight to the tenant’s evidence.

### *Mutual Agreement to End Tenancy*

A landlord and tenant may mutually agree in writing to end a tenancy. In this case, as acknowledged by the parties, they entered into a Mutual Agreement as described above.

The parties disagreed on one of the terms. The tenant claimed a term was amended, an assertion which the landlord denied. The tenant claimed the move-out date was moved

forward from October 1, 2021 such that the tenant is entitled to receive the \$4,000.00 payment under the Agreement.

The tenant testified the landlord consistently and repeatedly extended the move-out date as the tenant regularly reported the delay in vacating. The tenant testified the landlord assured the tenant he would receive the \$4,000.00 payment as the tenant was making his best effort to move out as quickly as possible. The tenant claimed the Agreement was amended to require the landlord to make the payment on the move-out date after October 1, 2021. The landlord agreed to this amendment in regular phone calls with the tenant.

The tenant attended the move-out meeting with expectations of receiving the payment as well as the return of the security deposit.

The landlord expressed conviction that only what was written in the Mutual Agreement was enforceable. The landlord acknowledged that after October 1, 2021 he did not expressly tell the tenant that he would no longer be receiving the payment. He testified to his belief that this information was not necessary as the requirement for the payment was not binding after October 1, 2021. In any event, he testified he did not assure the tenant the payment was forthcoming as testified by the tenant.

For the reasons set out above, I accept the tenant's testimony as supported by his witnesses. I find the tenant has met the burden of proof that the parties agreed after October 1, 2021, that the tenant would receive \$4,000.00 when the tenant moved out. I find the tenant regularly talked with the landlord and informed him of the delay in moving out. I find the tenant sought and received assurances the landlord would pay the tenant the money even if he was late in moving out. The date moved forward in keeping with the time the tenant needed to vacate.

While the landlord vehemently denied he agreed to extend the move-out date, I find it is more likely than not that he did agree to keep the tenant's "feet to the fire", that is, to exert pressure on the tenant to continue the moving out process. I find the Mutual Agreement was amended by agreement between the parties. I find the tenant is entitled to receipt of the \$4,000.00 for moving out when he did. I find the landlord promised to pay the money to the tenant when the tenant moved out which took place October 21 or 22, 2021.



I therefore find the tenant has met the burden of proof on a balance of probabilities with respect to this aspect of the claim and has met the 4-part test.

I grant the tenant an award of \$4,000.00.

### *Security deposit*

Section 38 of the *Act* requires the landlord to either return the tenant's security deposit in full or file for dispute resolution for authorization to retain the deposit 15 days after the later of the end of a tenancy or upon receipt of the tenant's forwarding address in writing.

If that does not occur, the landlord must pay a monetary award, pursuant to section 38(6)(b) of the *Act*, equivalent to double the value of the security deposit. However, this provision does not apply if the landlord has obtained the tenant's written permission to keep all or a portion of the security deposit pursuant to Section 38(4)(a).

I find that at no time has the landlord brought an application for dispute resolution claiming against the security deposit for any damage to the rental unit pursuant to section 38(1)(d) of the *Act*.

I accept the tenant's evidence they have not waived their right to obtain a payment pursuant to section 38 of the *Act*. I accept the tenant's evidence that the tenant gave the landlord written notice of their forwarding address on the moving out meeting on October 21 or 22, 2021.

The landlord claimed he returned the tenant's security deposit to him, and the tenant did not accept it or tore it up. I do not accept the landlord's testimony as believable for the reasons set out above.

In any event, I find the landlord made no subsequent effort to return the security deposit. The landlord did not mail the tenant a cheque or a replacement cheque. I find the landlord has not acted with good faith to sincerely accomplish the return of the money and has not met the landlord's obligation in this regard under the *Act*.

Under these circumstances and in accordance with sections 38(6) and 72 of the *Act*, I grant a monetary order of **doubling of the security deposit**.

*Summary of Award*

I grant the tenant a Monetary Order as follows:

ITEM	AMOUNT
Mutual Agreement payment	\$4,000.00
Security deposit	\$500.00
Doubling of security deposit	\$500.00
Reimbursement filing fee	\$100.00
<b>TOTAL Monetary Order</b>	<b>\$5,100.00</b>

Conclusion

I grant the tenant a Monetary Order of \$5,100.00. This Monetary Order must be served on the landlord. The Monetary Order may be filed and enforced in the Courts of the Province of BC.

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 13, 2022

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Residential Tenancy Branch