



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding PETER WALL MANSION & ESTATE  
and [tenant name suppressed to protect privacy]

## **DECISION**

**Dispute Codes**      FFT, MNSD, MNDCT

### **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; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

ZM represented the landlord in this hearing. 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 by the attending parties. 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 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 September 1, 2020, and continued on a month-to-month basis after August 31, 2021. The tenancy ended on September 30, 2021. Monthly rent was set at \$2,190.00, payable on the first of the month. The landlord had collected a security deposit in the amount of \$1,095.00.

The tenant filed this application requesting the following compensation and monetary orders.

- 1) Return of their security deposit of \$1,095.00, including the \$250.00 deposit deducted for cleaning.
- 2) Compensation for failing to return entire security deposit \$1,095.00
- 3) Refund of \$440.00 paid for utility service
- 4) \$130.00 in moving fees due to overbooking of elevator and treatment by managers
- 5) Filing Fee \$100.00.

The tenant testified that the landlord had deducted \$250.00 for cleaning without their permission, and returned the rest in the form of a cheque. The tenant testified that they have been unable to cash the cheque as the tenant's name was misspelled. The tenant testified that the move-out was a stressful day, and although they did sign the move-out inspection report, they did not agree to the cleaning charge.

The tenant testified that the move-out inspection was scheduled to be at 1:30 p.m. but the tenant's move was delayed due to the fact that the landlord failed to properly book

the elevator, causing the tenant to pay additional moving costs. The tenant testified that they had confirmed with the landlord on September 22, 2021 that the elevator was booked, but on the day of the move the tenant realized that the elevator was not booked. The tenant testified that the manager argued with them, and was extremely rude. The tenant testified that the managers have never apologized for the situation.

The tenant is also requesting reimbursement of mandatory utility charges charged by the landlord. The tenant testified that they had paid \$440.00 for cable and internet service they did not request nor use.

The landlord responded that the tenant had agreed to the deduction of \$250.00 for the cleaning, as supported by the move-out inspection report. The landlord submitted a copy of the invoice, as well as the document where the tenant had initialed that they agree to the cleaning charge.

The landlord testified that they had returned the tenant's security deposit minus the deduction, and the cheque was issued in the name of the tenant as spelled on the tenancy agreement and move-out inspection. The landlord testified that it was an honest mistake as the "r" in the tenant's name resembled an "l", and the tenant never requested a new cheque until the tenant filed for dispute resolution.

The landlord testified that there are three elevators in the building shared amongst 273 units. The landlord testified that they do not recall exactly what happened, but that there was a delay due to the previous tenant. The landlord disputes that they had delayed the tenant's move, and testified that the tenant was not even ready for the move-out inspection as the rental unit was not properly cleaned. The landlord testified that the elevator was booked for the tenant, and the tenant was able to use the elevator and move out that day.

The landlord testified that they had explained everything before the tenant had signed all the agreements, which included the telecommunication services agreement, which the landlord submitted in evidence. The agreement states that the landlord requires the tenant to enter into the agreement as a condition of leasing the rental suite, and requires the tenant to subscribe for Basic Service.

### **Analysis**

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 consideration of the evidence before me, I find that the tenant had clearly signed in the area marked "agree" for \$250.00 to be deducted for general suite cleaning. Although the tenant now denies that they had agreed to this charge, I find that the evidence clearly showed that the tenant had provided written authorization to deduct this amount. The tenant's application for the return of this deduction is therefore dismissed without leave to reapply.

I also find that the landlord did indeed issue a cheque for the return of the remainder of the tenant's security deposit dated October 7, 2021. I also note that the tenant's name appeared to be spelled with an "l" in several documents, and a reasonable party would have easily misspelled the tenant's name because of this. I find that the landlord did attempt to comply with section 38 by returning the remainder of the tenant's security deposit within the required 15 days. I do not find the error to be intentional nor malicious and as noted above, another party could have easily made the same mistake. I do not find that the landlord had contravened section 38 of the *Act*, and therefore I dismiss the tenant's application for compensation under section 38 of the *Act* without leave to reapply. I order that the landlord issue the tenant a replacement cheque in the amount of \$845.00 in the tenant's proper name within 15 days of receiving this decision if the tenant has not yet been provided with a replacement.

I will now consider the remainder of the tenant's application for monetary compensation.

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.

I find that the tenant had clearly signed the telecommunications agreement, which states that the tenant agreed to the terms of the tenancy, which included a requirement that the tenant subscribe and pay for Basic Service. Although the tenant resided in the rental unit for over a year, the tenant had never filed an application disputing the validity of the agreement, about any issues the tenant had with the service that was to be provided, or charges that the tenant felt were not authorized or fair. I find that the evidence clearly shows that the tenant had agreed to enter into the telecommunication agreement, which involved additional charges which the tenant clearly agreed to. Accordingly, I dismiss the tenant's application for reimbursement of \$440.00 without leave to reapply.

Lastly, I have considered the testimony and submissions of both parties about what happened on the last day of the tenancy. I accept the tenant's testimony that they were not happy with the how they were treated on the last day of the tenancy, and how the events unfolded. However, I am not satisfied that the tenant had provided sufficient evidence to support the losses claimed. Although the tenant claims that the elevator was not properly booked or delayed, I am not satisfied that the delay was due to the landlord's actions, or issues within the landlord's control. I find that considering the number of available elevators in a building with a hundreds of units, the tenant may be subjected to delays or issues that arise due to circumstances beyond the landlord's control. I find that the tenant was provided the use of the elevator, and furthermore, I

find that the tenant failed to provide sufficient proof to support that it was due to the landlord's actions that they had to pay \$130.00 more. As noted above, the burden is on the tenant to demonstrate that the other party had contravened the *Act* or tenancy agreement in a manner that has caused the tenant to suffer a loss in the amounts claimed.

In consideration of the tenant's testimony of how the landlord or their agents were disrespectful or unprofessional, I am not satisfied that these allegation are sufficiently supported in evidence, and definitely not to the extent that justifies the monetary claim 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 amount 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 loss 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 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. 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 entire application is dismissed without leave to reapply.

I order that the landlord provide a replacement cheque in the tenant's proper name, within 15 days of the receipt of this decision. In the event that the landlord does not provide the tenant with a replacement cheque within 15 days, the tenant is provided with a monetary order in the amount of \$845.00, which must be served on the landlord .

Should the landlord(s) fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial 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 *Residential Tenancy Act*.

Dated: July 12, 2022