



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding PLAN A REAL ESTATE SERVICES LTD. and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNDL-S, FFL

### Introduction

This hearing dealt with an Application for Dispute Resolution filed by the Landlord under the *Residential Tenancy Act* (the Act) on February 15, 2022, seeking:

- Monetary compensation;
- Recovery of the filing fee; and
- Retention of the security deposit.

The hearing was convened by telephone conference call on October 4, 2022, at 1:30 P.M. (Pacific Time), and was attended by an agent for the Landlord K.H. (the Agent), who provided affirmed testimony. No one appeared on behalf of the Tenant. The Agent was provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

The Residential Tenancy Branch Rules of Procedure (the Rules of Procedure) state that the respondent must be served with a copy of the Application, the Notice of Hearing, and any documentary evidence intended to be relied upon by the applicant at the hearing. As neither the Tenant nor an agent for the Tenant attended the hearing, I confirmed service of these documents as explained below.

The Agent stated that they sent the Notice of Dispute Resolution Proceeding (NODRP) to the Tenant via registered mail on March 10, 2022, at the forwarding address provided by the Tenant on the move-out condition inspection report on January 31, 2022. The Agent provided me with the registered mail tracking number, which I have recorded on the cover page of this decision. Branch records indicate that the NODRP was emailed to the Landlord on February 23, 2022. The Agent stated that there was a delay in mailing the NODRP to the Tenant as the Tenant had not included the name of the

community in their forwarding address. The Agent stated that they were able to ascertain what community the forwarding address was located in, and then the registered mail was sent. The Agent stated that the registered mail was ultimately returned as undeliverable as the address was invalid. The Agent stated that at this point they discovered that the Tenant had only provided them with the street address, but not a unit address. The Agent stated that they attempted to contact the Tenant to get an updated address but received no response.

The Agent stated that after repeated failed attempts to get an updated service address for the Tenant, the documentary evidence before me was also sent to the Tenant on September 16, 2022, by registered mail at the forwarding address listed by the Tenant on the move-out condition inspection report. The Agent provided me with a registered mail tracking number, which I have recorded on the cover page of this decision. The Agent stated that again, the registered mail could not be delivered.

Although I am satisfied that the above noted registered mail packages were ultimately not delivered to the Tenant, I find that this occurred as a direct result of the Tenant's provision of an invalid or incomplete forwarding address on the move-out condition inspection report. I am also satisfied that the Tenant avoided the Landlord's repeated attempts to contact them for a valid/updated/complete forwarding address, once they realized that a unit number was required. Section 38(1) of the Act requires that a landlord either return a security deposit to a tenant, or file an application for dispute resolution with the Branch seeking retention of the security deposit, within 15 days after the later of either the date the tenancy ends or the date the landlord receives the tenant's forwarding address in writing. As a result, I find that the Landlord was required by the Act to either return the Tenant's security deposit to them or file a claim against it with the Residential Tenancy Branch (Branch), within 15 days after July 31, 2022, which is the date that the tenancy ended and the date the Tenant provided their forwarding address in writing to the Landlord via the move-out condition inspection report.

As a result, I find that the Landlord was therefore entitled to use the forwarding address provided by the Tenant on the move-out condition inspection report to serve the Tenant with the Application, the NODRP, and the documentary evidence before me on behalf of the Landlord, despite the fact that it was an incomplete address, as I am satisfied that the Tenant knew or ought to have known at either the time they provided this forwarding address in writing to the Landlord or after attempts by the Landlord to reach them regarding the invalidity of the forwarding address, that the forwarding address provided was invalid/incomplete. I therefore take the Tenant's provision of an incomplete/invalid

forwarding address on the move-out condition inspection report and their subsequent failure to provide the Landlord with a complete/valid or updated forwarding address, as an intentional attempt to avoid service. As set out in Residential Tenancy Policy Guideline (Policy Guideline) #12, where a document is served by registered mail, the avoidance of service does not override the deemed service provisions of the Act, and receipt continues to be deemed to have occurred on the fifth day after mailing. As a result, I deem the above noted documents received by the Tenant for the purposes of the Act and the Rules of Procedure on March 15, 2022, and September 21, 2022, respectively.

Rule 7.1 of the Rules of Procedure states that the dispute resolution hearing will commence at the scheduled time unless otherwise set by the arbitrator. I verified that the hearing information contained in the NODRP was correct, and I note that the Agent had no difficulty attending the hearing on time using this information. As the Agent and I attended the hearing on time and ready to proceed, and I was satisfied as set out above that the Tenant was deemed served with the NODRP for the purpose of the Act on March 15, 2022, I therefore commenced the hearing as scheduled at 1:30 P.M. on October 4, 2022, despite the absence of the Tenant, pursuant to rule 7.3 of the Rules of Procedure. Although the teleconference remained open for the full duration of the hearing, no one attended the hearing on behalf of the Tenant.

The Agent was advised that pursuant to rule 6.10 of the Rules of Procedure, interruptions and inappropriate behavior would not be permitted and could result in limitations on participation, such as being muted, or exclusion from the proceedings. The Agent was asked to refrain from speaking over myself and to hold their questions and responses until it was their opportunity to speak. The Agent was also advised that pursuant to rule 6.11 of the Rules of Procedure, recordings of the proceedings are prohibited, except as allowable under rule 6.12, and the parties confirmed that they were not recording the proceedings.

Although I have reviewed all evidence and testimony before me that was accepted for consideration in accordance with the Rules of Procedure, I refer only to the relevant and determinative facts, evidence, and issues in this decision.

At the request of Agent, copies of the decision and any orders issued in favor of the Landlord will be emailed to them at the email address listed in the Application and confirmed at the hearing.

Issue(s) to be Decided

Is the Landlord entitled to monetary compensation?

Is the Landlord entitled to recovery of the filing fee?

Is the Landlord entitled to retain any portion of the security deposit?

Background and Evidence

The Agent stated that a tenancy under the Act existed between the Landlord and the Tenant, which ended when the Tenant vacated the rental unit on January 31, 2022. The one-year fixed term tenancy agreement in the documentary evidence before me states that the tenancy commenced on February 1, 2021, that rent in the amount of \$2,600.00 is due on the first day of each month and that a security deposit in the amount of \$1,200.00 is required. At the hearing, the Agent confirmed that the security deposit was paid and is still held in trust by the Landlord.

The Agent stated that the rental unit is in a Strata building and that noise complaints were made about the Tenant to the Strata on March 14, 2021, June 4, 2021, and June 11, 2021. The Agent stated that a subsequent complaint was made to the Strata on January 15, 2022, as the fire alarm in the rental unit was set off and intoxicated persons were found in the rental unit by the fire department when they attended. The Agent stated that as a result, three separate fines were levied against the rental unit in the amount of \$200.00 each. As a result, the Agent sought recovery of \$600.00 in Strata fines from the Tenant. In support of these claims, the Agent pointed to three separate bylaw infraction letters, the tenancy agreement, and a signed form K indicating that the Tenant had been provided notice of their responsibilities under the Strata Property Act as a tenant of the Strata Property.

The Agent stated that the Tenant also paid rent late in November of 2021 and January of 2022, and sought the recovery of \$50.00 in late fees calculated at \$25.00 per month. In support of this claim the Agent pointed to rent receipts for November of 2021 and January of 2022 and the tenancy agreement. Although the Agent acknowledged that the tenancy agreement states that late fees higher than \$25.00 per month may be charged, they stated that the Landlord is only seeking \$25.00 per month in late fees for November of 2021 in January of 2022, as that is the maximum allowable under the Act and the regulations.

The Agent stated that at the end of the tenancy the Tenant did not leave the rental unit reasonably clean as required by the Act, and therefore the Landlord incurred \$157.50 in cleaning fees. The Agent pointed to a cleaning invoice in the documentary evidence before me and sought recovery of this amount from the Tenant.

Finally, the Agent also sought recovery of the \$100.00 filing fee paid by the Landlord for the Application, and authorization to withhold any amount owed to the Landlord by the Tenant from the \$1,200.00 security deposit currently held in trust.

Although the teleconference remained open for the full duration of the hearing, no one attended on behalf of the Tenant to provide any evidence or testimony for my consideration.

### Analysis

Section 37(1)(2) of the Act states that when a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean. Section 7 of the Act states that if a landlord or tenant does not comply with the Act, regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

From the uncontested affirmed testimony of the Agent and the documentary evidence before me, I am satisfied on a balance of probabilities that the Tenant failed to leave the rental unit reasonably clean at the end of the tenancy, as required by section 37(2)(a) of the Act. I am also satisfied that the Tenant is responsible for \$600.00 in Strata fines, and that the Tenant was aware of the Strata rules and their requirement to follow them, based on the signed form K before me. As a result, I grant the Landlord the \$757.50 sought at the hearing for cleaning costs and recovery of Strata fines.

Section 7 of the regulations states that a landlord may charge an administrative fee of not more than \$25.00 for late payment of rent if the tenancy agreement provides for this fee. Under the section "Paying Rent" in the tenancy agreement in the documentary evidence before me, it states that a late fee will be applied the first day rent is late. As the Landlord is only seeking \$25.00 per month in late fees, I am satisfied that the tenancy agreement allows the Landlord to charge a late fee, and I am satisfied based on the rent receipts before me that the Tenant paid rent late in November of 2021 and January of 2022, I therefore grant the Landlord \$50.00 for late fees. As the Landlord was successful in their claims, I also grant them recovery of the \$100.00 filing fee pursuant to section 72(1) of the Act.

Having made these findings, I will now turn to the matter of the security deposit. As there is no evidence before me that the Landlord extinguish their right to claim against the security deposit, I find that they did not. Based on the move-out condition inspection report in the documentary evidence before me and the affirmed and undisputed testimony of the Agent I am satisfied that the Tenant provided the forwarding address shown on the move-out condition inspection report, in writing, on January 31 2022. I am also satisfied that the tenancy ended on this date. I therefore find that the Landlord complied with section 38(1) of the Act when they filed their claim seeking retention of the security deposit with the Branch on February 15, 2022.

As a result of the above, and pursuant to section 72(2)(b) of the Act, I therefore grant the Landlord authority to withhold \$907.50 from the \$1,200.00 security deposit held in trust for the above noted amounts owed to the Landlord by the Tenant. Pursuant to section 67 of the Act and Policy Guideline #17, I grant the Tenant a Monetary Order in the amount of **\$292.50**, for the balance of the security deposit owed to them, and I order the Landlord to pay this amount to the Tenant.

### Conclusion

The Landlord is entitled to retain \$907.50 from the Tenant's \$1,200.00 security deposit in repayment of amounts owed.

Pursuant to section 67 of the Act, I grant the Tenant a Monetary Order in the amount of **\$292.50**. The Tenant is provided with this Order in the above terms and the Landlord must be served with this Order as soon as possible. Should the Landlord 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: October 05, 2022

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Residential Tenancy Branch