



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      **MNDCT, MNSD**

### Introduction

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

1. An Order for compensation for a monetary loss or other money owed pursuant to Section 67 of the Act; and,
2. An Order for the return of the security deposit that the Landlord is holding without cause pursuant to Section 38 of Act.

The hearing was conducted via teleconference. The Tenant and his Advocate attended the hearing at the appointed date and time and provided affirmed testimony. The Landlord did not attend the hearing. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the Tenant and I were the only ones who had called into this teleconference. The Tenant was given a full opportunity to be heard, to make submissions, and to call witnesses.

I advised the Tenant that Rule 6.11 of the Residential Tenancy Branch (the "RTB") Rules of Procedure prohibits the recording of dispute resolution hearings. The Tenant and his Advocate testified that they were not recording this dispute resolution hearing.

The Tenant testified that he served the Landlord with the Notice of Dispute Resolution Proceeding package for this hearing on November 22, 2021 by Canada Post registered mail (the "NoDRP package"). The Tenant referred me to the Canada Post registered mail receipt with tracking number submitted into documentary evidence as proof of service. I noted the registered mail tracking number on the cover sheet of this decision. I

find that the Landlord was deemed served with the NoDRP package five days after mailing them, on November 27, 2021, in accordance with Sections 89(1)(c) and 90(a) of the Act.

### Issues to be Decided

1. Is the Tenant entitled to an Order for compensation for a monetary loss or other money owed?
2. Is the Tenant entitled to an Order for the return of the security deposit that the Landlord is holding without cause?

### Background and Evidence

I have reviewed all written and oral evidence and submissions before me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this decision.

The Tenant testified that this periodic tenancy began on March 13, 2021. Monthly rent was \$850.00 payable on the 13th day of each month. A security deposit of \$425.00 was collected at the start of the tenancy and is still held by the Landlord. The lease agreement states, *"This agreement shall commence on 03/13/21 and continue ... until 04/13, 2021 on a month-to-month tenancy until either party shall terminate this agreement by giving a written intention at least 30 days prior to the date of termination."*

The Tenant stated that on June 13, 2021, the Tenant sent an etransfer to the Landlord for \$850.00 for the rent that month. The etransfer was accepted by the Landlord. The Tenant said on noon of June 13, 2021, the Landlord came to the rental unit and told the Tenant that he had to move out that day. The Tenant argued that the Landlord provided no reason why the Landlord was ending the tenancy.

The Tenant stated that he packed up his belongings, and him and another tenant in the home drove to a hotel which the Landlord told them he would be covering the cost. The Tenant said the Landlord did not pay for the hotel, but the Landlord's daughter came to the hotel and paid for two nights for the two tenants who shared one room. The Tenant continued to stay in the hotel until June 19, 2021 and went to stay in an Airbnb to reduce costs. The Tenant incurred hotel costs of \$504.22.

As the Tenant and the other tenant were too crowded in the hotel room, the Landlord promised he would find an Airbnb for them to share. The Landlord did not find an Airbnb, but the Tenant did, and him and the other tenant relocated to a two-bedroom Airbnb which was less costly than the hotel. The Tenant paid for the Airbnb stay totalling \$1,386.04. On July 2, 2021, the Tenant testified that he secured alternative housing for himself.

On July 2, 2021, the Tenant emailed the Landlord and provided his forwarding address. In that email, the Tenant also requested the return of June's rent which was paid on June 13, 2021 and accepted by the Landlord for \$850.00. The Tenant also requested the return of his \$425.00 security deposit. The Tenant told that not all of his belongings would fit in the hotel, and the Landlord said he would store the four extra boxes of the Tenant's belongings. Later that week, the Tenant testified that the Landlord dropped off the four extra boxes that he had put into storage for the Tenant at his forwarding address.

The Tenant testified that neither a move-in condition inspection at the beginning of the tenancy nor a move-out condition inspection at the end of the tenancy were completed. The Tenant did not authorize the Landlord to retain any of the security deposit and is seeking its return.

### Analysis

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.

This hearing was conducted pursuant to RTB Rules of Procedure 7.3, in the Landlord's absence, therefore, all the Tenant's testimony is undisputed. Rules of Procedure 7.3 states:

***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.*

***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.*

RTB Policy Guideline #16-Compensation for Damage or Loss addresses the criteria for awarding compensation to an affected party. This guideline states, “*The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. It is up to the party who is claiming compensation to provide evidence to establish that compensation is due.*” This section must be read in conjunction with Section 67 of the Act.

Policy Guideline #16 asks me to analyze whether:

- a party to the tenancy agreement has failed to comply with the Act, Regulation, or tenancy agreement;
- loss or damage has resulted from this non-compliance;
- the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and,
- the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

**Monetary Compensation**

The Landlord did not provide a “*written intention at least 30 days prior to the date of termination*” pursuant to the tenancy agreement in this matter. The Tenant testified that Landlord required them to move out of the rental unit in a quick fashion but offered to cover his accommodation at a hotel, then later at an Airbnb. The Tenant provided a receipt for the total of the hotel, then when they relocated to the Airbnb which cost less than the hotel, he provided a receipt for the 10 days stay at the Airbnb. I find that the Landlord failed to comply with the Act and the tenancy agreement in this matter and that the Tenant is owed compensation for the damage or loss he experienced at the end of

this tenancy. I find that the Landlord must compensate the Tenant **\$1,890.26** for the total accommodation costs the Tenant has proven he suffered.

I also find that the Landlord must compensate the Tenant for the **\$850.00** rent payment he made on June 13, 2021 but did not benefit from due to the quick end of tenancy events that happened on that day.

### **Security Deposit**

Based on the undisputed evidence of the Tenant, the Landlord did not complete either a move-in condition inspection or a move-out condition inspection of the rental unit under this tenancy agreement.

Sections 24 and 36 of the Act specifies that the Landlord's claim against a security deposit for damage to residential property is extinguished if the Landlord does not comply with providing the Tenant two opportunities to complete condition inspections at move-in and move-out. I find the Landlord cannot claim against the security deposit for damage to the rental unit as that right was extinguished.

Section 38 of the Act requires a landlord to either return a tenant's security or pet damage 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, and the date the landlord receives the tenant's forwarding address in writing. If that does not occur, the landlord is required to pay a monetary award, pursuant to Section 38(6)(b) of the Act, equivalent to double the value of the security and/or pet damage deposit. However, this provision does not apply if the landlord has obtained the tenant's written authorization to retain all or a portion of the security deposit to offset damages or losses arising out of the tenancy as per Section 38(4)(a) of the Act. A landlord may also, under Section 38(3)(b) of the Act, retain a tenant's security or pet damage deposit if an order to do so has been issued by an arbitrator.

On July 2, 2021, the Tenant provided his forwarding address to the Landlord, which I find the Landlord received as he later returned the four storage boxes of the Tenant's belongings to his new accommodations. I find the tenancy ended on June 13, 2021 pursuant to Section 44(1)(e) of the Act. The Landlord had until July 17, 2021 to repay the Tenant's security deposit. The Landlord did not. I find the Landlord must therefore pay the Tenant twice the amount of the security deposit held in trust pursuant to Section

38(6)(b) of the Act which totals **\$850.00**. There is no interest owed on the security deposit as the amount of interest owed has been 0% since 2009.

Accordingly, I find that the Tenant is entitled to an award of monetary compensation as follows:

Monetary Award

ITEMS	AMOUNT
Hotel and Airbnb accommodation	\$1,890.26
June 2021 rent return	\$850.00
Security deposit X 2	\$850.00
TOTAL Monetary Award:	\$3,590.26

Conclusion

I grant a Monetary Order to the Tenant in the amount of \$3,590.26. 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 of British Columbia 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 Act.

Dated: October 05, 2022

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Residential Tenancy Branch