



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      TT: MNETC, FFT  
                              TT: MNDCT, FFT

### Introduction

This hearing was convened as a result of the Tenant's Applications for Dispute Resolution (the "Application") under the *Residential Tenancy Act* (the "Act"), made on October 18, 2021 and another on March 1, 2022. The Tenant applied for the following relief pursuant to the *Act*;

- a monetary order for compensation relating to a Two Month Notice for Landlord's Use of the Property.
- a monetary order for damage or compensation; and
- a order granting the return of both filing fees.

The Tenant and the Tenant's Advocate L.W. and the Landlord attended the original hearing at the appointed date and time. The original hearing was adjourned as we ran out of time. The reconvened hearing was held on October 17, 2022. The same parties attended the reconvened hearing.

### Preliminary Matters

At the start of the original hearing, it was noted that the Tenant's Applications for monetary compensation combined amount to \$38,187.88.

According to the Residential Tenancy Branch Rules of Procedure (the "Rules of Procedure") 2.9; An applicant may not divide a claim.

Small Claims Limit Section 58(2) of the RTA and 51(2) of the MHPTA provide that the director can decline to resolve disputes for monetary claims that exceed the limit set out in the Small Claims Act. The limit is currently \$35,000. If a claim for damage or loss

exceeds the small claims limit, the director's policy is to decline jurisdiction. This ensures that more substantial claims are resolved in the BC Supreme Court, where more rigorous and formal procedures like document discovery are available. If an applicant abandons part of a claim to come within the small claims limit, the RTB will accept jurisdiction

In this case, the Tenant was provided with the option of abandoning one of the Applications and to pursue the other. The Tenant was not permitted to abandon a portion of the monetary claim at the time of the hearing, as I find that this would be prejudicial to the Landlord given, they would not have been aware of the amendments, nor would they have known to be prepared accordingly at the time of the hearing. The Tenant was at liberty to amend their application prior to the hearing in accordance with the Rules of Procedure to ensure that their Application are within the small claims limit outlined above.

The Tenant elected to abandon his Application for compensation relating to the Two Month Notice. I find that the Tenant is not permitted to reapply to the Residential Tenancy Branch with respect to this Application. The hearing continued based on the Tenant's Application for a monetary order relating to damage or compensation.

The parties confirmed service and receipt of their respective Application and documentary evidence. As there were no issues raised, I find the above-mentioned documents were sufficiently served pursuant to Section 71 of the *Act*.

The parties were given an opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

#### Issue(s) to be Decided

1. Is the Tenant entitled to a monetary order for damage or compensation, pursuant to Section 67 of the *Act*?
2. Is the Tenant entitled to the return of the filing fee, pursuant to Section 72 of the *Act*?

### Background and Evidence

The parties testified and agreed to the following: the tenancy started on August 1, 2014. Near the end of the tenancy, the Tenant was required to pay rent in the amount of \$1,250.00 which was due on the 1st of each month. The Tenant paid as security deposit in the amount of \$550.00.

The Tenant is claiming \$583.52 which represents a doubled amount of prorated rent for seven days from November 23, 2020 to November 30, 2020. The parties agreed that the Landlord served the Tenant with a Two Month Notice to End Tenancy for Landlords Use of the Property with an effective date of November 30, 2020. The parties agreed that the tenant disputed the Notice and that the parties had a dispute resolution hearing scheduled sometime in December 2020.

The Tenant stated that they had secured a new accommodation as of December 1, 2020 and was in the process of moving his belongings from the rental unit to their new accommodation. The Tenant stated that on November 23, 2020 the Landlord entered the rental unit and removed all of their personal possessions. The Tenant stated that the Landlord had no authority to do so, as that the tenant was still entitled to the rental unit. As such the Tenant feels entitled to reimbursement for the remaining seven days of the tenancy in which they were not able to use the rental unit. The Tenant has doubled the prorated amount of rent as the landlord's actions were egregious.

The Landlord stated that the Tenant had sent her an e-mail on November 20, 2020 indicating that they had moved out and requested that the Landlord dispose of their possessions on the basis that the Landlord would return the Tenant's deposit in full and that the Tenant could return the keys on November 22, 2022. The Landlord stated that she entered the rental unit on November 24, 2020 to find the rental unit mostly contained garbage which she disposed of and some of the Tenant's possessions which were stored.

The Landlord stated that the new purchaser was taking possession of the rental property as of December 1, 2020, therefore, the Landlord was motivated to gain vacant possession of the rental unit before that date, to avoid penalties. The Landlord provided a copy of the emails in support.

The Tenant stated that no agreement was made with respect to ending the tenancy on any particular date. The Tenant stated that he had left a sign on the door of the rental

unit stating that the suite is still occupied. The Tenant provided a picture of the sign in support.

The Tenant is claiming \$2,500.00 for aggravated damages relating to the Landlord moving out the Tenant's belongings prior to them vacating the rental unit which added to their stress of moving and that their children did not get Christmas presents due to the Landlord removing their possessions.

The Tenant stated that they could have been moved out by November 22, 2020, however, since the Landlord did not respond to the Tenant's offer, the Tenant changed their moving plans and decided the delay the move out until their hearing date in December 2020.

The Landlord stated that she entered the rental unit and took pictures and an inventory of items left in the rental unit. The Landlord also offered to conduct a move out inspection of the rental unit with the Tenant on November 30, 2020. The Tenant responded by email on November 22, 2020 by stating that he had moved and would not be able to attend the rental unit to conduct a move out inspection on November 30<sup>th</sup>, 2020 as he has to work.

The Tenant is claiming compensation in the amount of \$6,125.00 in relation to the fact that the Landlord has applied to the Tenancy Branch seeking compensation for cleaning and damages to the rental unit. The Tenant stated this caused additional stress and anxiety. The Landlord responded by stating that the issues at the end of the tenancy has also caused the Landlord to become stressed and anxious.

The Tenant is claiming \$2,000.00 in relation to aggravated damaged as a result of the Landlord disposing of the Tenant's children's therapy equipment. The Tenant stated that they were intending on returning to the rental unit to collect these items, however, the Landlord had indicated that they disposed of the items in a dumpster outside in November 2020. The Tenant stated that they wanted assurance from the Landlord that the items were not damaged before they travelled to gather the remaining items.

The Landlord confirmed that she safely stored the Tenant's possessions in a rented bin where they sat covered for two weeks before the Landlord was able to secure a storage locker, where the items have been safely stored ever since. The Landlord stated that their counsel sent the Tenant a letter advising that they can collect their items anytime. The Tenant confirmed that they have not yet collected their belongings as they suspect their possessions were damaged. The Tenant stated that they had requested an

itemized list of items from the Landlord, which was not provided for several months. The Tenant stated that the list provided by the Landlord was incomplete.

The Tenant is claiming \$750.00 in relation to replacing medical items including a toilet seat booster and a grab bar, that were left at the rental unit, and disposed of by the Landlord. The Tenant stated that they had to replace these items at their expense. The Landlord stated the Tenant deliberately left these items behind as they did not need them. The Landlord stated that the Tenant is only seeking monetary compensation and has made no effort to collect their possessions from storage.

The Tenant is claiming \$1,400.00 in relation to missed time at work as a result of having to prepare for sever dispute resolution hearings against the Landlord. The Landlord stated that they have also lost time from work to prepare for the hearings.

The Tenant is claiming \$500.00 to replace missing important documents which were removed by the Landlord from the rental unit. The Landlord denied that there were any documents left behind in the rental unit by the Tenant.

The Tenant is claiming \$9,123.00 in relation to replacing the possession that were removed by the Landlord. The Tenant stated that they still had a legal right to the rental unit. The Tenant provided a list of 41 items and their estimated replacement value. The Tenant stated that the Landlord gave them one opportunity to collect these items, however, the Tenant did not want to make the trip to collect the items without the assurance that the items had not been damaged.

The Landlord responded by stating that they took pictures of each item that was left in the rental unit by the Tenant before it was stored. The Landlord submitted to pictures of the rental unit and the Tenant's possession at the end of the tenancy. The Landlord stated that the Tenant is claiming for some items that were not in the rental unit. The Landlord stated that the Tenant was provided ample opportunity to collect their possessions but have yet done so.

### Analysis

Based on the oral testimony and documentary evidence, and on a balance of probabilities, I find:

In relation to the monetary compensation sought by the Tenant, Section 67 of the *Act* empowers me to order one party to pay compensation to the other if damage or loss results from a party not complying with the *Act*, regulations or a tenancy agreement.

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided for in sections 7 and 67 of the *Act*. Pursuant to Residential Tenancy Policy Guideline #16 an applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and
4. That the party making the application did what was reasonable to minimize the damage or loss.

In this case, the burden of proof is on the Tenant to prove the existence of the damage or loss, and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the Landlord. Once that has been established, the Tenant must then provide evidence that can verify the value of the loss or damage. Finally, it must be proven that the Tenant did what was reasonable to minimize the damage or losses that were incurred.

According to Section 24(1) of the Residential Tenancy Branch Regulations (the "Regulations");

A landlord may consider that a tenant has abandoned personal property if  
(a) the tenant leaves the personal property on residential property that he or she has vacated after the tenancy agreement has ended, or

(b) subject to subsection (2), the tenant leaves the personal property on residential property

(i) that, for a continuous period of one month, the tenant has not ordinarily occupied and for which he or she has not paid rent, or

(ii) from which the tenant has removed substantially all of his or her personal property.

(2) The landlord is entitled to consider the circumstances described in paragraph (1) (b) as abandonment only if

(a) the landlord receives an express oral or written notice of the tenant's intention not to return to the residential property, or

- (b) the circumstances surrounding the giving up of the rental unit are such that the tenant could not reasonably be expected to return to the residential property.
- (3) If personal property is abandoned as described in subsections (1) and (2), the landlord may remove the personal property from the residential property, and on removal must deal with it in accordance with this Part.
- (4) Subsection (3) does not apply if a landlord and tenant have made an express agreement to the contrary respecting the storage of personal property.

According to Section 25 of the Regulations - Landlord's obligations

**25** (1) The landlord must

- (a) store the tenant's personal property in a safe place and manner for a period of not less than 60 days following the date of removal,
  - (b) keep a written inventory of the property,
  - (c) keep particulars of the disposition of the property for 2 years following the date of disposition, and
  - (d) advise a tenant or a tenant's representative who requests the information either that the property is stored or that it has been disposed of.
- (2) Despite paragraph (1) (a), the landlord may dispose of the property in a commercially reasonable manner if the landlord reasonably believes that
- (a) the property has a total market value of less than \$500,
  - (b) the cost of removing, storing and selling the property would be more than the proceeds of its sale, or
  - (c) the storage of the property would be unsanitary or unsafe.
- (3) A court may, on application, determine the value of the property for the purposes of subsection (2).

In this case, I accept that the Tenant sent the Landlord an e-mail on November 20, 2020 indicating that they had moved out and requested that the landlord dispose of their possessions on the basis that the landlord would return the tenant's deposit in full and that the Tenant could return the keys on November 22, 2022. I accept that Landlord did not agree to returning the full deposit. I find that the message provided by the Tenant did acknowledge that they had vacated the rental unit.

I accept that the Landlord offered to conduct a move out inspection of the rental unit with the Tenant on November 30, 2020. The Tenant responded by email on November 22, 2020 by stating that he had moved and would not be able to attend the rental unit to conduct a move out inspection on November 30<sup>th</sup>, 2020 as he has to work. I find that the Tenant did not indicate to the Landlord that they were still in the process of moving, or

that they intended on returning to the rental unit. I find that as of November 22, 2020 the parties were only discussing when the move out condition inspection would take place.

I accept that the Landlord was motivated to finalize the end of the tenancy, as they had sold the rental property, and the new purchaser was moving in on December 1, 2020. The Landlord stated that she entered the rental unit on November 24, 2020 to find the rental unit mostly contained garbage which she disposed of and some items which were stored. I accept that the Landlord took pictures of the Tenant's possessions and stored them. I find that the pictures show that the rental unit contained mostly garbage which was littered around the rental unit.

While the Tenant had left a note on the door of the rental unit stating that the unit was still occupied and not to enter, I find that the note is not dated, therefore, I find it is reasonable for the Landlord, after having the November 22, 2020 discussion with the Tenant where the Tenant acknowledged they had moved, that the tenancy had ended. As such, I find that the Tenant abandoned their personal possessions pursuant to Section 24 of the Regulations.

I find that the Tenant's claim for aggravated damages in the amount of \$2,500.00 as a result of the Landlord entering the rental unit without permission is dismissed without leave to reapply.

According to Section 50 (1) If a landlord gives a tenant notice to end a periodic tenancy under section 49 [*landlord's use of property*] or 49.1 [*landlord's notice: tenant ceases to qualify*] or the tenant receives a director's order ending a periodic tenancy under section 49.2 [*director's orders: renovations or repairs*], the tenant may end the tenancy early by (a) giving the landlord at least 10 days' written notice to end the tenancy on a date that is earlier than the effective date of the landlord's notice or director's order, and (b) paying the landlord, on the date the tenant's notice is given, the proportion of the rent due to the effective date of the tenant's notice, unless subsection (2) applies.

(2) If the tenant paid rent before giving a notice under subsection (1), on receiving the tenant's notice, the landlord must refund any rent paid for a period after the effective date of the tenant's notice.

(3) A notice under this section does not affect the tenant's right to compensation under section 51 [*tenant's compensation: section 49 notice*].

The Tenant is claiming for \$583.52 which represents a doubled amount of prorated rent for seven days from November 23, 2020 to November 30, 2020. As there is insufficient evidence before me to demonstrate that the Tenant provided at least 10 days Notice to



the Landlord prior to vacating the rental unit pursuant to Section 50 of the Act. I therefore dismiss this claim without leave to reapply.

With respect to the Tenant's claim for compensation relating to their loss of property, I find that the Landlord did not breach the *Act*, by storing the Tenant's abandoned possessions at the end of the tenancy. I find that the Tenant could have mitigated their loss by collecting their items from storage. I do not accept that the Tenant's uncertainty relating to if their possessions were damaged prevented them from attending to collect the items.

As such, I dismiss the Tenant's claims for \$2,000.00 for loss of therapy equipment, \$750.00 for medical items, \$500.00 for missing documents, and \$9,123.00 for 41 miscellaneous items, without leave to reapply.

The Tenant has also claimed for compensation in the amount of \$6,125.00 00 in relation to the fact that the Landlord has applied to the Tenancy Branch seeking compensation for cleaning and damages to the rental unit. The Tenant stated this caused additional stress and anxiety. I find that the Landlord is at liberty to submit an application to the Tenancy Branch for compensation pursuant to the Act. As such, I find that the Landlord was entitled to submit their own application, therefore, dismiss this claim without leave to reapply.

Lastly, the Tenant is claiming for \$1,400.00 for missed time at work as a result of having to prepare for sever dispute resolution hearings against the Landlord. I find that these costs are not recoverable under the *Act* as it is the cost of doing business as a tenant/landlord.

As the Tenant was not successful with their Application, I find that they are not entitled to the return of the filing fee.

### Conclusion

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: November 9, 2022

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Residential Tenancy Branch