Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **MNDCT, MNSD, FFT**

Introduction

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

- 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 for the landlord to return the security deposit pursuant to section 38;

- An order requiring the landlord to reimburse the tenant for the filing fee pursuant to section 72.

The landlords ("the landlord") and the tenants ("the tenant") attended and had opportunity to make relevant submissions and to respond to the submissions of the other party pursuant to the Rules of Procedure. I explained the procedure and answered questions. The landlord acknowledged receipt of the tenant's evidence.

Service

At the outset, the tenant denied receipt of the landlord's evidence.

The landlord testified they sent the package by registered mail to each tenant separately on September 28, 2022, thereby effecting service under section 90 5 days later, October 3, 2022. The landlord testified to the mailing address, and the tenant confirmed the address was correct. The landlord submitted receipts and tracking numbers in support of service. The letters were returned uncollected. The tenant denied rejecting the mail or refusing to pick it up.

I informed the parties that I would include a finding regarding service in my final Decision.

Having reviewed the documents and testimony, I find the landlord sufficiently served the tenant with their evidence on October 3, 2022, 5 days after mailing.

In reaching my decision, I considered the following. The parties testified this is their third hearing, the second being a Decision in which the landlord was authorized to retain a portion of the security deposit including $150.00 for damage to the landlord's parking area caused by oil from the tenant's car. This Decision is dated March 09, 2022. The file number is referenced on the first page.

The current hearing involves an application by the tenant for compensation for the loss of their parking space as the landlord had denied them access because the tenant's car leaked oil. During the hearing, I found that the landlord's evidence was provided to the tenant in the previous hearing which concerned a different issue but the same facts.

Section 90 of the *Act* sets out when documents that are not personally served are considered to have been received. Unless there is evidence to the contrary, a document is considered or 'deemed' received on the fifth day after mailing if it is served by mail (ordinary or registered mail).

Residential Policy Guideline 12. Service Provisions provides guidance on determining deemed receipt, as follows:

> Where a document is served by Registered Mail, the refusal of the party to accept or pick up the Registered Mail, does not override the deeming provision. Where the Registered Mail is refused or deliberately not picked up, receipt continues to be deemed to have occurred on the fifth day after mailing.

The Supreme Court of British Columbia has determined that the deeming presumptions can be rebutted if fairness requires that that be done.

A party wishing to rebut a deemed receipt presumption should provide to the arbitrator clear evidence that the document was not received or evidence of the actual date the document was received. It is for the arbitrator to decide whether the document has been sufficiently served, and the date on which it was served.

The decision whether to make an order that a document has been sufficiently served in accordance with the Legislation or that a document not served in accordance with the Legislation is sufficiently given or served for the purposes of the Legislation is a decision for the arbitrator to make based on all the evidence before them.

In considering the evidence and testimony, I find the tenant has not rebutted the deemed receipt presumption. I find the tenant's testimony did not provide a plausible explanation for the failure to have received the registered mail. The tenant acknowledged that the address to which the evidence was mailed, was correct. I find the registered mail from the landlord was sent to the tenant at their correct residential address.

As well, the tenancy relationship was the subject of a previous Decision concerning the same facts. I find the landlord's evidence was served upon the tenant in the previous Decision and the landlord did not send new evidence.

Section 71(1) of the *Act* authorizes the RTB Director to make any of the following orders:

> (a) that a document must be served in a manner the director considers necessary, despite sections 88 [*how to give or serve documents generally*] and 89 [*special rules for certain documents*];
>
> (b) that a document has been sufficiently served for the purposes of this *Act* on a date the director specifies;
>
> (c) that a document not served in accordance with section 88 or 89 is sufficiently given or served for purposes of this *Act*.

I have found the landlord sent the registered to the tenant at their correct address, the tenant has not provided a plausible explanation for the failure to receive, and the evidence was provided to the tenant in a previous hearing.

Therefore, pursuant to my authority under section 71(1)(b) of the *Act*, and considering the evidence and testimony of the parties, I find that the tenant was sufficiently served with the evidence on October 3, 2022, 5 days after mailing.

Issue(s) to be Decided

Is the tenant entitled to the relief requested?

Background and Evidence

Both parties provided a substantial amount of conflicting testimony during the hearing. However, in this Decision I will only address the facts and evidence which underpin my findings. I will only summarize and address matters which are essential to determine the issues identified above. Not all documentary evidence and testimony will be summarized or addressed in full.

Background of Tenancy

The parties agreed on the background of the tenancy as follows.

The parties entered into a tenancy agreement that commenced on September 1, 2020, for a fixed term set to expire on June 30, 2021. The tenant paid a security deposit of $750.00 and were required to pay rent of $1,500.00 on the first day of every month.

Included in the agreement was an outdoor parking space close to the entrance to the unit.

Condition Inspection Reports

The landlord and tenant inspected the unit together at the start of the tenancy. The landlord prepared a document entitled “Suite deficiencies” rather than a move-in inspection report that complies with the Residential Tenancy Regulations.

Nevertheless, both parties executed the document indicating agreement with the assessment of pre-existing damage in the rental unit.

The tenancy ended on June 30, 2021 and on that date both the landlord and the tenant inspected the unit together. The landlord prepared a move-out inspection report consistent with the Residential Tenancy Regulations; however, the tenant did not agree with the assessment of the condition of the property and refused to sign the report.

Security deposit

The tenant did not authorize the landlord to make any deductions from their security deposit and sent the landlord their forwarding address on August 4, 2021. On August 19, 2021, the landlord filed the Application for Dispute Resolution under the previous hearing. In the previous Decision, the Arbitrator granted the landlord a Monetary Order of $375.00 and ordered the return of the balance of the security deposit of $375.00

Of relevance to this hearing, is the Arbitrator’s findings in the previous Decision relating to the oil on the parking space assigned to the tenant. The Arbitrator

awarded the landlord $150.00 for compensation for damages as part of the award of $375.00.

The parties agreed the landlord returned the balance of the security deposit of $375.00 to the tenant forthwith.

1. *Tenant's Claim – Restriction of Use of Parking Space*

The tenant seeks damages and compensation for the loss of the parking space for a period of 64 days. They clarified their claim at the hearing as a request for $20.00 a day for each of the 64 days without the parking space for a total requested award of $1,280.00.

The tenant claimed they were required to park on the street and were offered no alternative parking, contrary to the testimony of the landlord. Although their car was not broken into, street parking is well known to be riskier. They had to move all the contents of the vehicle including tools into the unit every night. As well, the street parking is a greater walking distance to the unit. As a result, the unavailability of the parking spot was an inconvenience and caused extra time.

The tenant acknowledged that oil dripped from their car and they are responsible for the damage. However, the tenant claimed a sufficient solution was to put a piece of plywood under the car to catch any further drips. The landlord disagreed and refused to allow the tenant access to the parking space until the oil leak was fixed. The tenant's car was not fixed for the duration of the tenancy.

In their application, the tenant stated:

> We were forcefully blocked us from our parking by family members and landlord vehicles for 64 days from April 26tth 2021 - June 29th 2021 after telling them they were in breach of contract.
>
> Therefore, this amount reflect the days not being able to park in parking spot & the inconvenience caused by walking a longer distance carrying personal items and groceries. The concern for safety as it was on a

dangerous curb with frequent cars passing by and the lack of enjoyment of the property.

The following section from the previous Decision describing the history of the matter was read aloud during the hearing. Each party agreed to the contents.

> The tenants had been provided a sparking space on the property at the side of the house. The landlords noticed an accumulation of oil on the driveway where the tenant's car parked on April 24, 2021. The landlords instructed the tenants to park on the street until they fixed their vehicle but the tenants objected to that.
>
> The landlords submitted that they also offered a gravel parking spot on the property to the tenants. The tenants denied that to be accurate.
>
> On April 26, 2021 the landlords positioned their vehicles in the driveway so as to block the tenant's ability to park on the driveway. The tenants started parking on the street from that point forward until the tenancy ended.
>
> On April 28, 2021 the landlords had a contractor attend the property and provide a quotation for replacing a 10' x 12' section of driveway where the tenant's vehicle had leaked oil on the driveway.
>
> The landlords acknowledge they have not yet replaced the section of driveway, explaining that the driveway is getting a lot of traffic as construction work has been taking place in the back yard.
>
> The tenants acknowledged that they noticed their car was leaking oil in the few weeks leading up to the landlord pointing it out to them. The tenants are agreeable to taking responsibility for the staining from the oil but are of the position the landlord's

claim is excessive. The tenants suggest that black asphalt paint would be a more reasonable remedy to rectify the oil staining.

The tenant pointed out that the landlord had applied a solution to the oil stains and covered it with cardboard and they suggest that the oil stains left after the solution was applied was not that bad. The landlord stated she used “oil lift” on the driveway but it was ineffective and that the oil had saturated through the asphalt which is why it requires replacement.

The tenants also submitted that the male landlord has a vehicle that also dripped oil on the driveway and there may have been pre-existing oil stains in their parking spot.

Both parties provided photographs of the oil stains. The tenants also provided videos of where they parked and of the landlord’s vehicle that leaked oil as well. The landlord also provided a copy of the quotation to replace the section of asphalt.

Landlord’s Reply

The landlord testified as follows. They stated they did not allow the tenant to continue using the parking space because their car was leaking oil, the oil had damaged the asphalt, and ongoing leaks would worsen the damage. The landlord described resultant damage to the parking spot which could not be remedied and will require expensive replacement of a portion of the 5-year-old asphalt driveway (not yet carried out).

The landlord submitted a copy of a texted dated April 23, 2021:

> Don’t worry about cleaning the driveway, I have special cleaner for that. More importantly if you could park on the street until the leak is fixed please. Motor oil eats through and damages the asphalt.

However, the landlord testified that the cleaner was not effective. The tenant continued to park their car in their parking spot and the landlord sent the following text, a copy of which was submitted:

> I was just out in the driveway and noticed there is a rag placed under your vehicle. As we previously discussed, I'm requesting that you not park in the driveway until your vehicle is fixed as it's damaged my property.

The tenant expressed lack of comprehension about why they were being asked not to park in their parking space. They texted to the landlord that plywood under the vehicle would catch any drips and it was inconvenient to park on the street.

The landlord responded saying they were trying to stop further damage:

> I understand your concern, however my property is being damaged by your vehicle. I appreciate your temporary solution, it's not acceptable. Asphalt repairs are very expensive. I'm trying to prevent further liability to you.

In another text, the landlord stated:

> Once your vehicle is fixed you're welcome to park back there. Until them, you're not permitted to park in the driveway.

The landlord stated that the oil from the tenant's car on the asphalt could not be quickly cleaned as they hoped. Instead, the oil caused the asphalt to deteriorate to a point where it will have to be replaced. The landlord explained that the oil causes discoloration and then weakening of the surface followed by permanent damage.

The tenant acknowledged their car was not fixed during the remainder of the tenancy.

The landlord testified they offered a parking spot on the other side of the building which had a gravel base. They submitted a copy of the letter:

I just wanted to reach out to you to reiterate the alternate parking options available to you due to your vehicle's oil leakage.

As previously discussed, you may park on the street in front of the house or on the gravel driveway on the south side of the house.

Please note, when your vehicle leakage is fixed, you are more than welcome to resume parking in the driveway.

The landlord submitted a photo of the alternate gravel parking area.

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Summary of Claim #1

The tenant stated the landlord unreasonably and without compensation denied them use of the parking space to which they were entitled. Alternative parking did not exist or was inconvenient.

The landlord stated the tenant damaged the parking space, they wanted to prevent further damage, the tenant could resume parking when the car was fixed and, in the meantime, the landlord offered alternative parking. The landlord requested the claim be dismissed without leave to reapply.

2. *Tenant's Claim – Security deposit*

The tenant claimed the landlord did not return their security deposit as required under the Act. They requested a doubling of the security deposit.

The parties agreed to the relevant dates are as follows:

ITEM	AMOUNT
September 1, 2020	Security deposit provided of $750.00 Condition inspection report moving in conducted
June 30, 2021	Tenant vacated

	Condition inspection on moving out conducted; tenant refused to sign
August 4, 2021	Tenant sent mailing address, deemed receipt under section 90, August 9, 2021
August 19, 2021	Landlord filed Application under previous file number
March 9, 2022	Previous Decision awarding landlord $375.00 and ordering landlord to return $375.00 of security deposit
March 10, 2022	L returned balance of security deposit of $375.00 as directed in previous Decision

The landlord stated they had returned the security deposit in compliance with the Act and requested the tenant's claim be dismissed.

Analysis

Credibility

In considering the application, I weighed the credibility of the parties. I considered the two competing versions of events. Each party accused the other of being unreasonable and submitting untrue or exaggerated testimony.

In reviewing the substantial evidence, I found the landlord to have the more reliable understanding of the damage to the parking surface from oil leaking from the tenant's car. I find the landlord credible in describing the deleterious effect of the oil on the 5-year-old asphalt surface and the reasonableness of their restriction on the tenant's use of the parking space. The landlord's version of events was supported in all aspects by documentary evidence. For these reasons, I provide more weight to the landlord's evidence and find the landlord's reasons for restricting the parking to be understandable given the circumstances as I understand them.

For these reasons, I prefer the landlord's evidence. Where the version of events differs, I prefer the landlord's version.

Standard of Proof

Rule 6.6 of the Residential Tenancy Branch Rules of Procedures state that 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.

It is up to the party to establish their claims on a balance of probabilities, that is, that the claims are more likely than not to be true.

In this case, it is up to the tenant to prove their claims.

When one party provides testimony of the events in one way, and the other party provides an equally probable but different explanation of the events, the party making the claim has not met the burden on a balance of probabilities and the claim fails.

Four-part Test

When an applicant seeks compensation under the Act, they must prove on a balance of probabilities all four of the following criteria before compensation may be awarded:

1. Has the other party failed to comply with the Act, regulations, or the tenancy agreement?
2. If yes, did the loss or damage result from the non-compliance?
3. Has the claiming party proven the amount or value of their damage or loss?
4. Has the claiming party done whatever is reasonable to minimize the damage or loss?

Failure to prove one of the above points means the claim fails.

Sections 7, 65 and 67 address compensation as follows:

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.

Director's orders: breach of Act, regulations or tenancy agreement

65 (1) Without limiting the general authority in section 62 (3) [director's authority respecting dispute resolution proceedings], if the director finds that a landlord or tenant has not complied with the Act, the regulations or a tenancy agreement, the director may make any of the following orders:

(a)…
(b) that a tenant must deduct an amount from rent to be expended on maintenance or a repair, or on a service or facility, as ordered by the director;
(c) that any money paid by a tenant to a landlord must be
(I) repaid to the tenant,
(ii) deducted from rent, or
(iii) treated as a payment of an obligation of the tenant to the landlord other than rent;

…

Director's orders: compensation for damage or loss

67 Without limiting the general authority in section 62 (3) [director's authority respecting dispute resolution proceedings], 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.

Termination of Service or Facilities

Under section 27 of the Act, a landlord must not terminate or restrict a service or facility if:

- the service or facility is essential to the tenant's use of the rental unit as living accommodation, or;
- providing the service or facility is a material term of the tenancy agreement.

A landlord may restrict or terminate a service or facility other than one referred to above, if the landlord:

- gives the tenant 30 days written notice in the approved form, and
- reduces the rent to compensate the tenant for loss of the service or facility.

Section 27 states:

> **Terminating or restricting services or facilities**
>
> **27** (1)A landlord must not terminate or restrict a service or facility if
>
> (a)the service or facility is essential to the tenant's use of the rental unit as living accommodation, or
>
> (b)providing the service or facility is a material term of the tenancy agreement.
>
> (2)A landlord may terminate or restrict a service or facility, other than one referred to in subsection (1), if the landlord
>
> (a) gives 30 days' written notice, in the approved form, of the termination or restriction, and
>
> (b) reduces the rent in an amount that is equivalent to the reduction in the value of the tenancy agreement resulting from the termination or restriction of the service or facility.

The landlord had an obligation to provide a parking space to the tenant under the terms of the agreement. However, in considering the entirety of the evidence and

the testimony of the parties, I find the tenant is responsible for damaging the parking space from ongoing leaking of oil. The tenant's refusal to fix the oil leaks resulted in the landlord's reasonable requirement that the tenant park elsewhere.

I also find the tenant did not experience significant inconvenience in having to park on the street. I also find the landlord offered the tenant an alternative gravel parking spot. While neither of these options met with the tenant's approval, the landlord made best efforts to reduce inconvenience to the tenant.

For these reasons, I find the tenant has failed to meet the first step of the 4-part test. The landlord has not breached the Act or the agreement.

I therefore dismiss the tenant's application without leave to reapply.

Security deposit

Section 38 of the Act requires the landlord to either return the security deposit or file for dispute resolution for authorization to retain the deposit, within 15 days after the later of the end of a tenancy and the tenant's provision of a 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 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 deposit to offset damages or losses arising out of the tenancy (section 38(4)(a)) or an amount that the Director has previously ordered the tenant to pay to the landlord, which remains unpaid at the end of the tenancy (section 38(3)(b)).

On a balance of probabilities, I make the following findings based on the testimony and evidence of both parties. I accept the timeline of events to which the parties agreed during the hearing:

ITEM	AMOUNT
September 1, 2020	Security deposit provided of $750.00 Condition inspection report moving in conducted
June 30, 2021	Tenant vacated Condition inspection on moving out conducted; tenant refused to sign
August 4, 2021	Tenant sent mailing address, deemed receipt under section 90, August 9, 2021
August 19, 2021	Landlord filed Application under previous file number
March 9, 2022	Previous Decision awarding landlord $375.00 and ordering landlord to return $375.00 of security deposit
March 10, 2022	L returned balance of security deposit of $375.00 as directed in previous Decision

Based on this timeline, I find the landlord made an application for dispute resolution to claim against the deposit for damages within 15 days of the receipt of the forwarding address.

I find the landlord returned the balance of the security deposit immediately after the receipt of the previous Decision.

I therefore find the landlord complied with the Act.

The tenant’s claim for a doubling of the security deposit is dismissed without leave to reapply.

Conclusion

The tenant's claims are 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 11, 2022

Residential Tenancy Branch