



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNRL-S, FFL

### Introduction

This hearing dealt with the Landlord's Application for Dispute Resolution made on November 21, 2022, pursuant to the Residential Tenancy Act (the Act). The Landlord applied for the following relief:

- a monetary order for unpaid rent;
- an order permitting the Landlord to retain the security deposit and/or pet damage deposit; and
- an order granting recovery of the filing fee.

During the hearing, the Tenant testified that her surname on the application is incorrect. The parties agreed to change the Tenant's name on the application. Pursuant to section 63(3) of the Act, I amend the application accordingly.

The Landlord was represented at the hearing by GC, an agent. The Tenant attended the hearing on her own behalf. Both GC and the Tenant provided affirmed testimony.

On behalf of the Landlord, GC testified that the Notice of Dispute Resolution Proceeding package was served on the Tenant by registered mail on November 30, 2022. GC also testified that a further documentary evidence package was served on the Tenant by registered mail on January 3, 2023. Canada Post registered mail receipts which included the date and time of purchase and showed the tracking number were submitted in support of service of both packages. Although the Tenant testified that she received only one package on January 6, 2023, and that it did not contain any evidence, I find it is more likely than not that the above packages were served on and are deemed to be received by the Tenant in accordance with the Act.

The Tenant did not submit documentary evidence in response to the application.

The parties were provided with a full 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 and to which I was referred. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Issues to be Decided

1. Is the Landlord entitled to a monetary order for unpaid rent?
2. Is the Landlord entitled to retain the security deposit?
3. Is the Landlord entitled to recover the filing fee?

### Background and Evidence

There were several discrepancies with respect to the terms of the tenancy. Although the application indicates that the tenancy began in 2010, the Tenant testified it began in 2008. Further, the application indicates the Tenant vacated the rental unit on November 1, 2022, whereas the Tenant testified that she moved out on November 7, 2022. While GC and the Tenant agreed with respect to the amount of rent due (\$1,600.00), they did not initially agree on the date rent was due. The Landlord's application indicates rent was due on the first day of each month; the Tenant testified that rent was due on the 20<sup>th</sup> day of each month. GC stated he was prepared to concede the terms were as described by the Tenant. The Landlord did not submit a copy of a written tenancy agreement into evidence.

GC and the Tenant did agree that the Tenant paid a security deposit of \$600.00, which the Landlord holds.

The Landlord seeks a monetary order for unpaid rent. GC testified the Tenant vacated the rental unit without notice and that she did not pay rent when due on September 20, October 20, November 20, and December 20, 2022. GC testified the Landlord was able to re-rent the unit effective January 1, 2023.

In reply, the Tenant testified that she did pay rent when due until she vacated the rental property on November 7, 2022. That is, the Tenant testified that rent was paid on September 20 and October 20, 2022, but was not paid on November 20 or thereafter.

The Landlord also seeks an order to retain the security deposit in partial satisfaction of unpaid rent and to recover the \$100.00 filing fee paid to make the application.

### Analysis

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

Section 26 of the Act confirms that a tenant must pay rent when due, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

This case highlights the difficulty of proving a claim for unpaid rent without reference to a written tenancy agreement or other documentation in support. However, based on the testimony of GC and the Tenant, I find I am not satisfied that the Tenant did not pay rent when due on September 20 and October 20, 2022. However, I also find it is more likely than not that the Tenant vacated the rental unit without notice on November 7, 2022. Even if the Tenant had provided notice to end the tenancy on that date, in accordance with section 45 of the Act, that notice would not have been effective until December 19, 2022. Therefore, I find that rent became due on November 20, 2022, even though the Tenant had vacated the rental unit. As a result, I find the Landlord is entitled to a monetary award for \$1,600.00 for unpaid rent for the period from November 20 to December 19, 2022.

I also accept that the Landlord acted reasonably by re-renting the unit effective on January 1, 2023, but was unable to do so before that date. As a result, I find the Landlord is also entitled to a monetary award for \$567.71 for unpaid rent for the period from December 20-31, 2022, calculated on a pro-rated basis as follows:

$$\text{\textbf{\$1,600.00 per month / 31 days = \$51.61 per day}}$$

$$\text{\textbf{\$51.61 per day x 11 days = \$567.71}}$$

Having been partially successful, I also find the Landlord has demonstrated an entitlement to recover the \$100.00 filing fee. I also find it is appropriate to permit the Landlord to retain the security deposit held in partial satisfaction of the Landlord's claim.

Considering the above, I grant the Landlord a monetary order for \$1,667.71, which has been calculated as follows:

Unpaid rent (Nov. 20 – Dec. 31, 2022):	\$2,167.71
Filing fee:	\$100.00
LESS security deposit:	(\$600.00)
<b>TOTAL:</b>	<b>\$1,667.71</b>

### Conclusion

The Landlord is granted a monetary order in the amount of \$1,667.71. The order may be filed in and enforced as an order of the Provincial Court of British Columbia (Small Claims).

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: January 25, 2023

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Residential Tenancy Branch