



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      **MNDCT, FFT**

### Introduction

This hearing dealt with an application by the tenant pursuant to the Residential Tenancy Act ("Act") for orders as follows:

- For a monetary order for damage or compensation pursuant to section 67 of the Act
- For reimbursement of the filing fee pursuant to section 72 of the Act

The landlord did not attend. The tenant CL attended. All parties were given a full opportunity to be heard, to present testimony, to make submissions, and to call witnesses.

The tenant confirmed he was not recording the hearing pursuant to Rule of Procedure 6.11 and was affirmed.

The tenant testified that he served the landlord with the dispute notice and evidence by registered mail sent May 2, 2022. He provided evidence of a tracking number. The registered mail package was returned, and the tenant applied to the RTB for substitutional service. His application was denied on the basis that he could rely on the deemed service provision under section 90 of the Act. I find the landlord properly served in accordance with sections 88 and 89 of the Act and is deemed served pursuant to section 90 of the Act.

### Issue(s) to be Decided

1. Is the tenant entitled to a monetary order for compensation?

2. Is the tenant entitled to reimbursement of filing fees?

Background and Evidence

The tenancy commenced October 12, 2020 for a two year fixed term until October 12, 2022. Rent was \$2,425.00 per month due on the 12<sup>th</sup> day of each month. The landlord took a security deposit of \$2,425.00 and still holds it in trust for the tenant. The tenant no longer occupies the rental unit having moved out on April 18, 2022.

The tenant testified that the landlord offered him \$10,000.00 to end the tenancy early. The tenant agreed and vacated the rental unit on April 18, 2022. The landlord has not paid the tenant the \$10,000.00 as promised. The tenant is seeking a monetary order for the compensation for the money promised by the landlord but never given. The tenant also advised that the landlord still holds the security deposit, and he is seeking return of the security deposit.

The tenant stated he paid rent on April 12, 2022 for rent up until May 12, 2022. He had moved out on April 18, 2022 but then believed that the landlord wasn't going to pay him the promised \$10,000.00. He returned to the residence April 18, 2022 as he believed he still had a valid tenancy agreement. The landlord contacted the police and the police attended the rental unit and advised the tenant to leave the unit. The police told the tenant that the landlord sent the police an eviction notice for the tenant. The police would not let the tenant see the information sent by the landlord. The tenant then left the rental unit. The tenant is requesting compensation of \$1859.17, which is 23 days of prorated rent from Apr 18<sup>th</sup> - May 12<sup>th</sup>, 2022.

Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. As noted in Policy Guideline #16, in order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. In this case, the onus is on the tenant to prove their entitlement to a claim for a monetary award.

The tenant is requesting a monetary order for the \$10,000.00 promised by the landlord upon the tenant vacating the rental unit prior to the end of the tenancy. Section 2 of the Act states that:

(1) Despite any other enactment but subject to [section 4](#) [*what this Act does not apply to*], this Act applies to tenancy agreements, rental units and other residential property.

(2) Except as otherwise provided in this Act, this Act applies to a tenancy agreement entered into before or after the date this Act comes into force.

The dispute between the landlord and tenant regarding the \$10,000.00 payment is not in relation to a tenancy agreement. It is an agreement entered into by the parties whereby the tenant voluntarily agreed to end the tenancy in exchange for a payment. This is an agreement that is outside of the tenancy agreement. Section 2 of the Act is clear that the Act applies to tenancy agreements. The agreement in dispute is not a tenancy agreement. Further, the compensation requested does not stem from a violation of the Act, but was a voluntary agreement. Therefore, I decline jurisdiction solely over the matter of the \$10,000.00 payment.

The undisputed evidence of the tenant is that he had paid full rent from April 12 through May 12, 2022, and wished to maintain his tenancy, at least until the landlord satisfied the payment agreement. The police attended and constructively evicted the tenant on April 18, 2022. There is no evidence before me that the landlord had received an order of possession for the rental unit. Therefore, the tenancy was effectively ended through the actions of the police after they were called to the premise by the landlord under the instructions that the tenant was on the property illegally. There is no evidence before me that it was done so in accordance with the Act. I find the tenant is entitled to an order for recovery of the prorated rent April 18 - May 12, 2022, in the amount of \$1,859.17.

The tenant also sought the return of his security deposit. However, there is no application before me requesting this and the tenant is free to apply for that relief.

As the tenant was partially successful in his application, he is entitled to recover his filing fee of \$100.00.

Conclusion

The tenant is granted a monetary order for \$1,959.17 in recovery of rent and the filing fee. The monetary order must be served on the landlord. The monetary 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 04, 2023

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Residential Tenancy Branch