



# Dispute Resolution Services

Residential Tenancy Branch  
Ministry of Housing

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## **DECISION**

Dispute Codes      MNSD MNETC MNDCT FFT

### Introduction

The Tenant seeks compensation against their former Landlord pursuant to sections 38, 67, and 72 of the *Residential Tenancy Act* (the “Act”). The Tenant, their witness (who did not testify), and the Landlord attended the dispute resolution hearing. The Tenant and the Landlord were affirmed before providing any substantive testimony.

### Issue

Is the Tenant entitled to compensation?

### Evidence and Analysis

In a dispute resolution proceeding, the applicant must prove their claims on a balance of probabilities (meaning “more likely than not”).

While I have read the parties’ submissions and evidence that was referred to in the hearing, I have not read and considered each, and every piece of documentary evidence (the Tenant’s documentary evidence alone exceeded 500 pages) not referred to or presented during the hearing. (See Rule 7.4 of the *Rules of Procedure*.) This bears repeating: only those claims specifically presented during the Tenant’s testimony, and only that evidence referred to, will be considered.

The tenancy began on May 1, 2018, and ended on February 28, 2022. There was a written tenancy agreement in place and in evidence. Monthly rent was \$2,740.00 and the Tenant paid a \$1,275.00 security deposit. There was also a “pet damage deposit” that was recurring monthly in the amount of \$75 payable since the start of the tenancy.

The Tenant sought compensation for a variety of items, some related to a loss of services or a reduction of rent (for loss of the backyard) and so forth during the almost-four-year long tenancy. Compensation was also sought for losses related to what the Tenant describes as “an illegal eviction.”

### **Claim for Losses Resulting from “Illegal Eviction”**

The Tenant testified about email communication between them and the Landlord in January 2022. The Landlord indicated that he would need to move into the rental unit with his family while another property was being built. The Tenant interpreted the communication to mean that they and their family would need to move out and find another home.

The Landlord testified that the Tenant misinterpreted this email exchange, and that, while the Landlord intended to move into the rental unit, that he was going to issue a notice to end tenancy. In any event, the Tenant decided to rent a new home and they vacated at the end of February 2022. The Tenant seeks various compensation for this moving out and “illegal eviction.”

Under the Act, the only legal methods by which a tenancy may be ended are those enumerated in section 44 of the Act. In all cases of a landlord ending a tenancy, they are required to issue a notice to end tenancy. Such notices, including one issued for a landlord’s intended use of occupying a rental unit, must be in the required form and must contain specific information (see sections 49 and 52 of the Act). In the absence of any such notice, the tenancy does not end.

In this dispute, despite there never being any notice to end tenancy being issued by the Landlord, the Tenant chose to vacate the rental unit in a very short period. By choosing to vacate the rental unit and essentially bring the tenancy to its end in the absence of any proper notice to end the tenancy, it is the Tenant who accepted the risk of potential monetary loss and failed to mitigate any such losses. A tenant who claims compensation for damage or loss *must* do whatever is reasonable to minimize the damage or loss (section 7(2) of the Act).

Having found that the Tenant failed to act reasonably to minimize their loss (potential or real) and having found that the Landlord did not breach any section of the Act in respect of how the tenancy ended, I conclude that the Tenant is not entitled to any compensation in respect of this aspect of their application. All amounts listed from “Document name” 10 through 16 (as listed in the Tenant’s revised monetary order worksheet) are thus dismissed.

The claims set out under “Document name” 7 and 17 for “compensation for violating Quiet enjoyment” and “Compensation due to being harrassed out of our home,” respectfully, do not provide any dollar amount and are indicated as “TBD.” It is an applicant’s responsibility to set out a specific dollar amount, along with providing an explanation for how that amount was calculated, when making a claim for compensation. As such, claims for “compensation for violating Quiet enjoyment” and “Compensation due to being harrassed out of our home” are dismissed.

**Claim for “Double Pet deposits \$75 monthly May 18/ Mar22”**

Regarding this claim, the Landlord denied ever receiving extra amounts for a recurring pet damage deposit. But the issue with this claim is that the Tenant accepted this additional amount from the very start of the tenancy. The Tenant essentially agreed to the increased amount, and paid this amount, since 2018. There is no evidence before me to find that the Tenant said “no, I’m not paying this.”

For this reason, I find that the Tenant is estopped from now claiming compensation based on their acquiescence to this increase. As such, this aspect of the Tenant's claim for compensation is dismissed.

### **Claim for Doubling of Security Deposit**

The security deposit was \$1,275. The Tenant claims that the Landlord did not return this deposit after they vacated. They also seek doubling of the security deposit.

The Landlord did not dispute this aspect of the Tenant's claim for compensation, although the Tenant did not provide sufficient evidence of when their forwarding address was provided to the Landlord. As such, while I grant the Tenant an award of \$1,275.00 representing the security deposit, I decline to order this amount be doubled.

### **Claim for "Double Refund of illegal rent increase of \$65"**

As with the recurring pet damage deposit, the Tenant agreed to pay increased rent over a period of more than 20 months. At no point did the Tenant choose not to pay this amount. For the same reason that the Tenant is estopped from claiming any compensation for the recurring pet damage deposit, the Tenant is estopped from seeking when they only now claim was an illegal rent increase. This aspect of the Tenant's claim is dismissed.

### **Claims for "Basement suite monthly hydro never paid," "10% overpayment of Fortis gas," and "Gas for basement 1, 2020 to February 16, 2022"**

Regarding this aspect of the Tenant's claim, the Tenant presented persuasive oral and documentary evidence to support their argument for compensation, and the Landlord did not testify about or otherwise dispute this aspect of the Tenant's claim. Further, these amounts were owed by the Landlord to the Tenant, but the Landlord for whatever reasons did not transfer amounts owing to the Tenant.

Taking into consideration all of the evidence before me and noting no dispute of this claim by the Landlord, it is my finding that the Tenant has proven this aspect of their claim on a balance of probabilities. The Tenant is therefore awarded a total of \$1,868.67. (Broken down into three subclaims under “Document name” 4, 5, and 6 on the Tenant’s revised monetary order worksheet.)

**Claim for “One month free for Landlord ‘moving in’”**

It is my understanding that this claim was dealt with in a previous dispute resolution hearing. As such, I make no decision regarding this claim.

**Claim for “Refund of the double payment of alpine”**

The Tenant did not provide any testimony, submissions, or make any argument regarding this aspect of their claim, during the hearing. As such, I will not consider this claim and accordingly it shall be dismissed.

**Claim for Application Fee**

As the Tenant was successful with portions of their application for compensation, they are entitled to recover the cost of the application fee in the amount of \$100.00. Pursuant to section 72 of the Act the Landlord is ordered to pay this amount, in addition to the other amounts above, to the Tenant.

**Summary**

In summary, the Tenant is awarded a total of \$3,243.67. A monetary order in this amount is issued with this decision to the Tenant. The Tenant must serve a copy of the monetary order upon the Landlord, who is ordered to pay this amount within 15 days of receiving a copy of the monetary order.

Conclusion

**The application is granted, in part. Those parts of the claim not granted are dismissed without leave to reapply.**

**The Tenant is granted a monetary order in the amount of \$3,243.67.**

This decision is final and binding, and it is made on delegated authority under section 9.1(1) of the Act. A party's right to appeal this decision is limited to grounds provided under section 79 of the Act or by an application for judicial review under the *Judicial Review Procedure Act*, RSBC 1996, c. 241.

Dated: July 6, 2023

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Residential Tenancy Branch