



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

A matter regarding 1327599 BC LTD  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNRL-S, MNDCL-S, FFL  
                              MNSD, FFT

### **Introduction**

This hearing dealt with the landlord's Application for Dispute Resolution (Application) filed on July 30, 2023, under the *Residential Tenancy Act* (the "Act") for:

- Recovery of unpaid or lost rent;
- Compensation for monetary loss or other money owed;
- Retention of the security deposit; and
- Recovery of the filing fee.

This hearing also dealt with the tenant's Application filed on August 4, 2023, under the Act for:

- The return of all or a part of the security deposit; and
- Recovery of the filing fee.

Tenant B.M.E. attended the hearing for the tenant.

Agent H.L. attended the hearing for the landlord.

### **Service of Notice of Dispute Resolution Proceeding (Proceeding Package)**

The tenant acknowledged receipt of the landlord's Proceeding Package. No concerns about service were raised. I therefore found the tenant duly served for the purposes of the Act and the Rules of Procedure and the hearing of the landlord's Application proceeded as scheduled.

However, the agent denied that the tenant's Proceeding Package was served on the landlord. The tenant stated that it was sent to the landlord by email, but provided no

corroboratory evidence. During the hearing, the tenant also stated that they were checking their sent emails, and could find no record this was sent to the landlord. Based on the lack of corroboratory evidence from the tenant, the tenant's statement during the hearing, and the agent's denial of receipt, I found that I could not be satisfied that the tenant's Proceeding Package was served on the landlord as required by section 59(3) of the Act and Rule 3.1 of the Residential Tenancy Branch Rules of Procedure (Rules of Procedure). I therefore dismissed the tenant's claim for return of the security deposit. As the landlord claimed against the security deposit, and I therefore must deal with whether it was properly retained and whether the tenant is entitled to its return or double its amount as part of the landlord's application, I dismissed this claim without leave to reapply. Their claim for recovery of the filing fee was also dismissed without leave to reapply.

## **Service of Evidence**

The tenant acknowledged receipt of the documentary evidence before me from the landlord. No concerns about service were raised. I therefore found the tenant duly served for the purposes of the Act and the Rules of Procedure and the documentary evidence before me from the landlord was accepted for consideration.

Although the tenant stated that their documentary evidence was sent to the landlord by email, they could not provide me with the date and no corroboratory evidence was submitted. The agent denied receipt by the landlord. Based on the lack of corroboratory evidence from the tenant, the tenant's inability to provide me with the date of service, and the agent's denial of receipt, I found that I could not be satisfied that the documentary evidence before me from the tenant was served on the landlord as required.

The ability to know the case against you is fundamental to the dispute resolution process. Rules 3.5 and 3.16 of the Rules of Procedure therefore state that at the hearing, the party submitting evidence must be prepared to demonstrate to the satisfaction of the arbitrator that each party was served with all evidence. As I am not satisfied by the tenant that the documentary evidence before me from them was served on the landlord as required, I find that it would be administratively unfair, unreasonably prejudicial, and a breach of the Rules of Procedure to admit it for consideration. I have therefore not considered it in making this decision.

## **Issues to be Decided**

Is the landlord entitled to unpaid or lost rent?

Is the landlord entitled to compensation for monetary loss or other money owed?

Is the landlord entitled to retention of the security deposit, and if not, is the tenant entitled to the return of all or a part of the security deposit?

Is the landlord entitled to recovery of the filing fee?

## **Background and Evidence**

Although a tenancy agreement was signed, and \$2,000.00 in deposits were paid, the parties agreed that the tenant never occupied the rental unit or paid any rent. As a result, the parties disagreed about whether the tenancy ever commenced. They also disagreed about:

- why the tenancy ended or failed to commence;
- whether the tenant was responsible for any rent;
- whether the tenant was responsible for liquidated damages; and
- whether the landlord was entitled to retain the \$2,000.00 in deposits paid.

In an email dated July 12, 2023, the landlord stated that they are happy to offer the rental unit to the tenant, and provided a copy of the tenancy agreement for them to sign. They also requested a deposit and provided instructions for payment. In an email chain on July 14, 2023, there is some back and forth between the parties, concluding with the landlord agreeing to meet the following day at 3:00 and the tenant agreeing to pay the deposit now and the first months rent upon receipt of the keys. Proof that \$2,000.00 was paid was submitted and the parties agreed this was paid on July 15, 2023.

Further communications were exchanged between the parties on July 14, 2023, wherein the landlord provides a calculation of the deposits and rent owed for July, less the \$2,000.00 already paid. This is where things appear to break down between them. The tenant did not want to pay rent until they completed the walk-through and received the keys. The landlord did not want to do the walk-through and hand over the keys until both deposits and full rent for July were paid. On July 17, 2023, the tenant signs the tenancy agreement, which they return to the landlord by email on July 18, 2023. On July 18, 2023, the landlord sends the tenant a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (10 Day Notice) for the July rent owing, as no rent had been paid, and the tenancy was set to start on July 15, 2023.

The parties disagreed about whether the landlord refused to meet with the tenant to provide the keys and do the move-in condition inspection before July rent and the

remaining \$1,375.00 in deposits was paid. They agreed that a meeting was initially set for this on July 15, 2023, at 3:00, and the tenant argued that they were prevented from attending due to traffic delays resulting from a motor vehicle accident. The parties disagreed about what happened thereafter, with the tenant arguing that the landlord repeatedly advised them via text that the tenancy agreement was revoked, which the agent denied. The tenant argued that the landlord refused to meet them to exchange keys and complete the condition inspection, which the agent denied, stating that it is the tenant who refused to meet with the landlord as they did not want to pay the rent. The parties agreed that a 10 Day Notice was sent to the tenant by email on July 18, 2023, and that no rent was ever paid. The tenant stated that they did not pay the rent as the landlord was refusing to meet them or give them access to the rental unit.

The parties agreed that the tenant was never given possession of the rental unit, and ultimately provided their forwarding address in writing to the landlord via email on July 19, 2023. The agent sought \$1,687.50 in unpaid or lost rent for July 2023, as well as liquidated damages as set out under term 13 of the addendum to the tenancy agreement (addendum), as well as recovery of the filing fee and retention of the \$2,000.00 in deposits held in trust. The tenant denied that rent or liquidated damages are owed, and requested the return of their deposits.

## **Analysis**

### **Is the landlord entitled to unpaid or lost rent?**

Section 16 of the Act states that the rights and obligations of a landlord and tenant under a tenancy agreement take effect from the date the tenancy agreement is entered into, whether the tenant ever occupies the rental unit. Section 26(1) of the Act states that a tenant must pay rent when it is due under the tenancy agreement, whether the landlord complies with the Act, the regulations, or the tenancy agreement, unless the tenant has a right under the Act to deduct all or a portion of the rent.

I am satisfied by the testimony of the parties and the documentary evidence before me from the landlord that an offer was made by the landlord on July 12, 2023, when they sent the tenancy agreement to the tenant to sign. I find that acceptance occurred when the tenant signed the tenancy agreement on July 17, 2023, wherein they agreed to rent the unit at the specified rent amount. The tenant also paid \$2,000.00 in deposits on July 15, 2023. I therefore find that a tenancy agreement subject to the requirements of the Act existed between the parties, even though the tenant never occupied the rental unit.

The tenancy agreement states that the fixed-term tenancy commenced on July 15, 2023, and was set to end on July 31, 2023. It states that \$3,375.00 in rent is due on the first day of each month, and that a security deposit and a pet damage deposit are both required in the amount of \$1,687.50 each. As soon as the tenancy agreement was signed on July 17, 2023, the tenant was obligated to pay the rent stipulated under it. As rent was set at \$3,375.00 per month and the tenant was responsible for rent beginning

on July 15, 2023, under the tenancy agreement, I find that upon signing the agreement the tenant was therefore responsible for the half a month's rent sought by the landlord for July of 2023. The parties agreed that no rent was ever paid, which I find to be a breach by the tenant to section 26(1) of the Act.

Section 7 of the Act states that if a landlord or tenant does not comply with the Act, the regulations, or the tenancy agreement, the non-complying party must compensate the other for damage or loss that results. It also states that the party claiming the loss must do whatever is reasonable to minimize the damage or loss. Section 67 of the Act states that without limiting the general authority in section 62(3), if damage or loss results from a party not complying with the 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.

I am satisfied that the tenant breached both the tenancy agreement and section 26(1) of the Act when they failed to pay rent as required for July of 2023. I am also satisfied that this resulted in a loss of \$1,687.50 by the landlord, and that the landlord attempted to mitigate this loss by serving the 10 Day Notice in an attempt to get the tenant to pay the rent. The landlord also has not claimed for any additional lost rent for the period after July 31, 2023. I therefore award the landlord recovery of the \$1,687.50 in unpaid and lost rent for July 2023, pursuant to sections 7, 26(1), and 67 of the Act.

**Is the landlord entitled to compensation for monetary loss or other money owed?**

The landlord sought recovery of \$3,375.00 in liquidated damages for the early end of the fixed-term tenancy, pursuant to term 13 of the addendum to the tenancy agreement. However, I find this term of the tenancy agreement unenforceable by the landlord, because I am satisfied that the landlord induced the premature end of the tenancy by failing to provide the tenant with access to the rental unit. Once the tenancy agreement was entered into, the landlord was obligated to provide the tenant with keys to the rental unit, or other means of access, regardless of whether the rent was paid. The landlord did not provide the tenant with keys or any other means of access, thereby preventing the tenant from moving in and forcing the end of the tenancy. I therefore dismiss their claim for liquidated damages without leave to reapply.

**Is the landlord entitled to recovery of the filing fee?**

As the landlord was successful in at least some of the above claims, I therefore grant them recovery of the \$100.00 filing fee pursuant to section 72(1) of the Act.

**Is the landlord entitled to retention of the deposits, and if not, is the tenant entitled to the return of all, a part, or double the amount of the deposits?**

As set out above, I am satisfied that the landlord forced the end of the tenancy agreement by unlawfully preventing access to the rental unit by the tenant. I am

satisfied that the tenancy ended by July 19, 2023, if not earlier, which is also the date that the tenant provided the landlord with their forwarding address by email. The landlord acknowledged receipt of the tenant's forwarding address on the Residential Tenancy Branch (Branch) form, via email on July 19, 2023. Although email is not a valid method of service under section 88 of the Act, as the landlord acknowledged receipt, I find them sufficiently served on that date pursuant to sections 71(2)(b) and (c) of the Act.

The parties agreed that \$2,000.00 in deposits was paid on July 15, 2023. Based on the tenancy agreement, I find that \$1,687.50 was for a security deposit, and the remaining \$762.50 was for a portion of the \$1,678.50 pet damage deposit owed.

I am not satisfied that the landlord properly scheduled or completed a move-in condition inspection at the start of the tenancy as required by section 23 of the Act. I therefore find that they extinguished their right to claim against the \$1,687.50 security deposit pursuant to section 24 of the Act, but only in relation to damage to the rental unit. As the landlord filed the Application seeking retention of the security deposit on July 30, 2023, and the application was not for damage to the rental unit, I find that the landlord nevertheless complied with section 38(1) of the Act in relation to the \$1,687.50 security deposit. However, section 1 of the Act defines a pet damage deposit as money paid, or value or a right given, by or on behalf of a tenant to a landlord that is to be held as security for damage to residential property caused by a pet. The landlord made no claims in the Application related to pet damage and, in any event, I have already found above that they extinguished their right to claim against the deposits for damage. Further to this, Residential Tenancy Policy Guideline (Policy Guideline) #31 states that a landlord may only apply to an arbitrator to keep all or a portion of the pet damage deposit to pay for damage caused by a pet.

Based on the above, I find that the landlord improperly withheld the \$762.50 paid by the tenant towards the pet damage deposit, and was not entitled to withhold it under section 38(1) of the Act pending the outcome of this Application. Section 38(6) of the Act states that if a landlord does not comply with subsection (1), the landlord may not make a claim against the pet damage deposit, and must pay the tenant double the amount of the pet damage deposit. I therefore grant the tenant double its amount, \$1,525.00, plus \$5.05 in interest owed.

Pursuant to section 72(2)(b) of the Act, I permit the landlord to retain the \$1,698.68 security deposit, which includes \$11.18 in interest, in partial satisfaction of the \$1,787.50 owed to them by the tenant for rent and the filing fee. The remaining balance owed to them, \$88.82, is offset by the \$1,530.05 owed by them to the tenant for double the amount of the pet damage deposit paid, plus interest. As a result, and pursuant to section 67 of the Act, I grant the tenant a monetary order in the amount of \$1,441.23, and I order the landlord to pay this amount to the tenant.

## Conclusion

Pursuant to section 72(2)(b) of the Act, the landlord is entitled to retain the \$1,698.68 security deposit and interest currently held in trust.

Pursuant to section 67 of the Act, I grant the tenant a Monetary Order in the amount of **\$1,441.23**. The tenant is provided with this Order in the above terms and the landlord must be served with this Order as soon as possible. Should the landlord fail to comply with this Order, it may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

This decision is made on authority delegated to me by the Director of the Branch under Section 9.1(1) of the Act.

Dated: November 15, 2023

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Residential Tenancy Branch