



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

## **DECISION**

### **Dispute Codes**

Landlord: MNRL, MNDL, MNDCL-S, FFL  
Tenant: MNDCT, OLC

### **Introduction**

This hearing was convened in response to cross-applications by the parties pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

The landlord requested:

- a monetary order for money owed or compensation for damage or loss pursuant to section 67; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The tenant requested:

- a Monetary Order for compensation for loss under the Act, regulation or tenancy agreement under section 67 of the Act
- an order requiring the landlord to comply with the Act, regulation or tenancy agreement under section 62 of the Act

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. Both parties were clearly informed of the RTB Rules of Procedure about behaviour including Rule 6.10 about interruptions and inappropriate behaviour, and Rule 6.11 which prohibits the recording of a dispute resolution hearing. Both parties confirmed that they understood.

Both parties confirmed receipt of each other’s applications for dispute resolution hearing package (“Applications”) and evidence. In accordance with sections 88 and 89 of the *Act*, I find that both the landlords and tenant were duly served with the Applications and evidence.

**Preliminary Issue-Tenant's Claims**

Since the tenant filed their application on July 11, 2023, the tenant had moved out. The tenant confirmed that as they had withheld \$334.58 from their rent before moving out, they no longer a monetary order for this amount. The tenant requested the return of their security deposit of \$750.00 less a \$80.00 deduction for cleaning. Accordingly, the tenant's original claims were withdrawn.

**Issue(s) to be Decided**

Is the landlord entitled to a monetary award for losses or money owed arising out of this tenancy?

Is the landlord entitled to recover the filing fee for this application?

**Background and Evidence**

I have reviewed all evidence, including the testimony of the parties, but will refer only to what I find relevant for my decision.

This tenancy began on February 1, 2022, with monthly rent set at \$1,500.00, payable on the first of the month. The landlord holds a security deposit of \$750.00.

On August 8, 2023, the tenant was served with a 10 Day Notice to End Tenancy for Unpaid Rent as the tenant withheld \$334.58 from the August 2023 rent. The tenant confirmed that they withheld the amount as their car was towed from the parkade, and the tenant had to incur losses associated with retrieving their vehicle after it was towed. The tenant disputed the 10 Day Notice on August 16, 2023, and moved out on or about August 31, 2023. The landlord testified that they received a text message from the tenant on August 24, 2023 that they were moving out. The landlord was able to re-rent the suite for September 14, 2023.

The landlord is requesting the following monetary orders:

Item	Amount
Reimbursement of withheld rent for August 2023	\$334.58
Loss of Rental Income-September 1-13, 2023	750.00
Building Fob	45.00
Wall Damage	418.35

<b>Total Monetary Order Requested</b>	<b>\$ 1,547.93</b>
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The landlord testified that they did not receive a strata notice as their email account was out of memory. The landlord was unaware that the visitor parking area was being painted, and therefore did not inform the tenant. As a result, the tenant's car was towed. The landlord testified that they did request reimbursement from the strata, but was informed that the tenant was violating the rules by parking in visitor parking. The strata also informed the landlord that in addition to the email that was sent out, there were also signs posted everywhere about the painting.

The landlord testified that the tenant had returned the FOB by mailing it, and therefore the landlord required a new FOB for showing the suite so they could re-rent it as soon as possible. The landlord testified that the unit was brand new when the tenant moved in, and the tenant had damaged the wall.

The landlord testified that they were unable to find a new tenant until September 14, 2023. The landlord testified that they were unable to access the unit until September 5, 2023 after they obtained a new FOB. Then the landlord had to clean the rental unit in order to take photos and advertise the unit for rental.

The tenant testified that they had moved out on August 31, 2023, and that they were pressed for time. The tenant testified that they did return the FOB by mail to the landlord, and that they had given notice to the landlord that they would be moving out.

The tenant disputes that they should be responsible for the wall damage as they believed it was regular wear and tear.

The tenant felt that they had the right to withhold the \$334.58 as their car got towed. The tenant argued that the landlord failed to communicate the strata notice. The tenant testified that they had regularly parked in visitor parking as other tenants also did so.

The tenant feels that the landlord had ample time to find a new tenant, and questioned whether the landlord really faced a monetary loss for September. The tenant testified that the landlord did not provide sufficient proof that they were unable to find a new tenant until September 14, 2023.

### **Analysis**

When making a claim for damages under a tenancy agreement or the *Act*, the party making the claim has the burden of proving their claim. Proving a claim in damages

includes establishing that damage or loss occurred; establishing that the damage or loss was the result of a breach of the tenancy agreement or *Act*; establishing the amount of the loss or damage; and establishing that the party claiming damages took reasonable steps to mitigate their loss.

I find that the landlord failed to forward important communication to the tenant, which would have impacted the tenant's decision to park their vehicle in visitor parking. I find that if the landlord did provide the tenant with the strata's notice, the tenant would have been able to avoid having their car towed. I do, however, find that the tenant had parked their car in an area that was designated for visitor parking, which was in contravention of strata bylaws. I find that the tenant should take partial responsibility for the towing of their car as the car was parked in an unauthorized area of the parkade. As both parties are partially responsible for the towing of the car, I find that the tenant is only entitled to reimbursement of half of their losses associated with retrieving their vehicle. As the tenant had already withheld \$334.58 from the monthly rent, I order that the tenant repay the landlord \$167.29 of that amount.

I find that the tenant failed to return the FOB to the landlord at the end of the tenancy, and as a result of the delay, the landlord had to spend \$45.00 in order to purchase a new one so they could show the suite to prospective tenants. Accordingly, I allow the landlord reimbursement of this loss.

In consideration of the landlord's claim for lost rental income for September 2023, I find that the landlord was informed by the tenant on August 24, 2023 that they would be moving out. I find that the tenant failed to provide sufficient notice for the landlord to re-rent the suite for September 1, 2023. Furthermore, I find that the FOB was mailed to the landlord, which delayed the landlord's access to the suite. I must now consider whether the landlord had mitigated the losses claimed. In this case, although the landlord testified that the suite was re-rented on September 14, 2023, the landlord did not provide sufficient evidence to support the details of this new tenancy. As the landlord is required to mitigate their losses pursuant to section 7(2) of the *Act*, and as the landlord did not provide sufficient evidence to support whether they suffered a monetary loss of rent for September 2023, I dismiss the landlord's claim for lost rental income for the month of September 2023.

Section 37(2)(a) of the *Act* stipulates that when a tenant vacates a rental unit the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.

In this case, although the landlord did provide an estimate for repairs to the wall, the landlord failed to provide sufficient evidence that this repair was completed, and that they had paid for this repair. As the onus is on the applicant to support their loss, and as I am not satisfied that the landlord had paid the amount requested, I dismiss the landlord's claim without leave to reapply.

As the landlord's application had some merit, I allow the landlord to recover the filing fee for this application.

In accordance with the offsetting provisions of section 72 of the *Act*, I order the landlord to retain the tenant's security deposit plus applicable interest in satisfaction of the monetary awards granted to the landlord. As per the RTB Online Interest Tool found at <http://www.housing.gov.bc.ca/rtb/WebTools/InterestOnDepositCalculator.html>, over the period of this tenancy, \$13.24 is payable as interest on the tenant's security deposit from January 28, 2022, when the deposit was originally paid, until the date of this decision, November 26, 2023. I order that the landlord return the remainder to the tenant, less \$80.00 for cleaning as agreed to by the tenant.

### **Conclusion**

I issue a Monetary Order in the amount of \$370.95 in the tenant's favour under the following terms:

<b>Item</b>	<b>Amount</b>
Reimbursement of withheld rent for August 2023	\$167.29
Building Fob	45.00
Filing Fee	100.00
Less security deposit held plus interest, less \$80.00 for cleaning (\$763.24-\$80.00)	-\$683.24
<b>Return of remaining security deposit to tenant</b>	<b>\$ 370.95</b>

The tenant is provided with this Order in the above terms and the landlord must be served with a copy of this Order as soon as possible. Should the landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

I dismiss the remaining claims 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 26, 2023

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Residential Tenancy Branch