



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      LL: MNDCL-S, FFL  
                             TT: MNDCT, MNSD

### Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties under the *Residential Tenancy Act* (the “Act”).

The Landlord’s Application for Dispute Resolution was made on January 13, 2023, (the “Landlord’s Application”). The Landlord applied for the following relief, pursuant to the *Act*:

- a monetary order for damage, compensation, or loss;
- an order to retain the security deposit; and
- an order granting recovery of the filing fee.

The Tenant’s Application for Dispute Resolution was made on January 19, 2023 (the “Tenant’s Application”). The Tenant applied for the following relief, pursuant to the *Act*:

- a monetary order for damage or compensation; and
- an order granting the return of all or part of the security deposit.

The Landlord, the Landlord’s witness R.A., the Tenant, and the Tenant’s Translator S.S. attended the original hearing at the appointed date and time. At the start of the hearing, the Tenant confirmed receipt of the Landlord’s Application and documentary evidence. As such I find these documents were sufficiently served pursuant to Section 71 of the *Act*.

The Tenant stated that they served their Application to the Landlord by email on January 21, 2023. The Landlord stated that they did not receive the Tenant’s Application. The Tenant did not submit any proof of service.

The parties confirmed that they had agreed that email was an approved form of service for tenancy related documents. The hearing was adjourned to allow the Tenant an opportunity to re-serve their Application and evidence to the Landlord. The Landlord is permitted to provide evidence in response to the Tenant's Application.

The hearing reconvened on March 4, 2024 and was attended by the same parties. The Landlord confirmed receipt of the Tenant's Proceeding Package and evidence. I find these documents were sufficiently served pursuant to Section 71 of the Act. The Landlord confirmed that after receiving the Tenant's Application, they did not submit any further evidence.

#### Issue(s) to be Decided

1. Is the Landlord entitled to a monetary order for compensation or loss, pursuant to Section 67 of the *Act*?
2. Is the Landlord entitled to an order granting recovery of the filing fee, pursuant to Section 72 of the *Act*?
3. Is the Landlord entitled to retain the Tenant's security deposit pursuant to Section 38 of the *Act*?
4. Is the Tenant entitled to a monetary order for damage or compensation, pursuant to Section 67 of the *Act*?
5. Is the Tenant entitled to an order granting the return of the security deposit, pursuant to Section 38 of the *Act*?
6. Is the Tenant entitled to an order granting recovery of the filing fee, pursuant to Section 72 of the *Act*?

#### Background and Evidence

The parties testified and agreed to the following; the fixed term tenancy began on June 1, 2022 and was meant to continue until at least May 31, 2023. The Tenant was required to pay rent in the amount of \$1,800.00 which was due on the first day of each month. The Tenant paid a security deposit in the amount of \$900.00 which the Landlord continues to hold. The tenancy ended on January 1, 2023. A tenancy agreement was submitted in support.

#### The Landlord's claim

The Landlord is seeking compensation for loss of January 2023 rent in the amount of \$1,800.00. The Landlord stated that they purchased the rental property on December 5, 2022. The Landlord stated that they received a text message from the Tenant on December 6, 2022 stating that they would like to end their tenancy "at the end of December." The Landlord submitted a copy of the text in support.

The Landlord stated that they requested the Tenant provide their notice to end tenancy in the proper form. The Landlord stated that the Tenant signed a proper notice to end tenancy on December 8, 2022, before vacating the rental unit on January 1, 2023. The Landlord provided a copy of the notice to end tenancy signed by the Tenant.

The Landlord stated that the Tenant did not provide sufficient notice before ending their tenancy, which resulted in the Landlord being unable to re-rent the rental unit for the month of January 2023.

The Tenant stated that they were forced to sign the notice to end tenancy. The Tenant stated that the Landlord threatened them and harassed them into leaving. As such, the Tenant feels as though they should not have to compensate the Landlord.

The Landlord is seeking the recovery of their \$100.00 filing fee.

#### The Tenant's Claim

The Tenant is seeking monetary compensation in the amount of \$13,200.00.

The Tenant is claiming \$650.00 to cover the costs of staying in a short-term vacation rental after she vacated the rental unit. The Tenant stated that she was forced to end her tenancy by the Landlord and was unable to secure a new residence. The Landlord stated that the Tenant provided their notice to end tenancy initially by text, and then signed a notice to end tenancy in the proper form.

The Tenant is claiming \$9,000.00 which represents 5 months of rent at \$1,800.00 per month, which the Tenant would have paid at the rental unit, as they were unable to find another accommodation after vacating the rental unit. The Landlord stated that the Tenant chose to leave before the end of the fixed term tenancy, and that the Landlord should be claiming for the loss.

The Tenant is claiming \$2,550.00 for lost wages and \$100.00 for gas for the time it took to drive around to find another accommodation. The Landlord had no response.

Lastly, the Tenant is seeking the return of their security deposit in the amount of \$900.00. The Tenant stated that the Landlord did not perform a condition inspection of the rental unit at the end of the tenancy.

### Analysis

Based on all of the above, the evidence and testimony, and on a balance of probabilities, I find:

Section 67 of the *Act* empowers me to order one party to pay compensation to the other if damage or loss results from a party not complying with the *Act*, regulations or a tenancy agreement.

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided for in sections 7 and 67 of the *Act*. An applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and
4. That the party making the application did what was reasonable to minimize the damage or loss.

In this case, the burden of proof is on the Applicant to prove the existence of the damage or loss, and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the Respondent. Once that has been established, the Applicant must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the Applicant did what was reasonable to minimize the damage or losses that were incurred.

### The Landlord's Claim

The Landlord is seeking \$1,800.00 for loss of rent for January 2023 as the Tenant served their notice to end the fixed term tenancy early on December 8, 2022.

According to Section 45 of the *Act*, A tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that;

- (a) is not earlier than one month after the date the landlord receives the notice,
- (b) is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and
- (c) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

The Residential Tenancy Policy Guideline #30 states that during the fixed term neither the landlord nor the tenant may end the tenancy except for cause or by agreement of both parties. A tenant may end the tenancy if the landlord has breached a material term of the tenancy agreement. The tenant must give proper notice under the Legislation. Breach of a material term involves a breach which is so serious that it goes to the heart of the tenancy agreement.

Policy Guideline #8 describes a material term as a term that the parties both agree is so important that the most trivial breach of that term gives the other party the right to end the agreement. Furthermore, Policy Guideline #8 indicates that in order to end a tenancy agreement for breach of a material term the party alleging a breach – whether landlord or tenant – must inform the other party in writing:

- (a) that there is a problem;*
- (b) that they believe the problem is a breach of a material term of the tenancy agreement;*
- (c) that the problem must be fixed by a deadline included in the letter, and that the deadline be reasonable; and*
- (d) that if the problem is not fixed by the deadline, the party will end the tenancy.*

According to Section 45(3) of the *Act*, if a Landlord has failed to comply with a material term of the tenancy agreement and has not corrected the situation within a reasonable period after the tenant gives written notice of the failure, the tenant may end the tenancy effective on a date that is after the date the landlord receives the notice.

In this case, the Tenant stated they were forced to sign the notice to end tenancy as the Landlord was threatening. I find that the Tenant provided insufficient evidence to demonstrate that they were forced to sign the notice to end tenancy. I find that the Tenant had previously texted their intention to end the tenancy on December 6, 2022, one day after the Landlord purchased the rental unit. I find that the Tenant served their notice to end tenancy on December 8, 2022 to the Landlord, with an effective vacancy

date of January 1, 2023. I find that the Tenant did not provide adequate notice to the Landlord pursuant to section 45(3) of the *Act*.

I accept that the parties agreed that rent was \$1,800.00 due on the first day of each. I find that the Landlord is entitled to compensation in the amount of **\$1,800.00** for January 2023 rent.

Having been successful with their Application, I find the Landlord is entitled to the recovery of the **\$100.00** filling fee.

In summary, I find the Landlord has demonstrated an entitlement to a monetary award of \$1,900.00.

#### The Tenants' Claim

The Tenant is claiming \$650.00 to cover the costs of staying in a short-term vacation rental after she vacated the rental unit. The Tenant stated that she was forced to end her tenancy by the Landlord and was unable to secure a new residence.

The Tenant is claiming \$9,000.00 which represents 5 months of rent at \$1,800.00 per month, which the Tenant would have paid at the rental unit, as they were unable to find another accommodation after vacating the rental unit.

The Tenant is claiming \$2,550.00 for lost wages and \$100.00 for gas for the time it took to drive around to find another accommodation.

In this case, I find that the Tenant has provided insufficient evidence to demonstrate that the Landlord has breached the *Act*. I find that the Tenant provided their notice to end tenancy first by text on December 6, 2022, and again by signing a notice to end tenancy in the proper form on December 8, 2022. I find that the Tenant could have mitigated their loss by not ending their tenancy. I find there is insufficient evidence to demonstrate that the Landlord threatened the Tenant to end their tenancy.

In light of the above, I dismiss the Tenant's monetary claims for compensation without leave to reapply.

The Tenant is seeking the return of their security deposit in the amount of \$900.00. The Tenant stated that the Landlord did not perform a condition inspection of the rental unit at the end of the tenancy.

Section 38(1) of the *Act* requires a landlord to repay deposits or make an application to keep them by making a claim against them by filing an application for dispute resolution within 15 days after receiving a tenant's forwarding address in writing or the end of the tenancy, whichever is later. If a landlord fails to repay deposits or make a claim against them within 15 days, section 38(6) of the *Act* confirms the tenant is entitled to receive double the amount of the deposits.

In this case, the Tenants argument that the Landlords extinguished their right to claim against the security deposit has no effect, as extinguishment under either sections 24 and 36 of the *Act* only relate to claims for damage to the rental unit. In this case, the Landlord's claims do not relate to damage to the rental unit, as a result, whether they extinguished or not has no bearing on the outcome of the current Applications.

Pursuant to section 67 of the *Act*, I find that the Landlord has demonstrated an entitlement to retain the security deposit in the amount of \$900.00 in partial satisfaction of the monetary award granted. I grant the Landlord with a monetary order in the amount of \$1,000.00 (\$1,900.00 - \$900.00).

### Conclusion

Pursuant to section 67 of the *Act*, the Landlord is granted a monetary order in the amount of \$1,000.00. The monetary order must be served on the tenants and 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: March 5, 2024

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Residential Tenancy Branch