



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

A matter regarding MIDDLEGATE DEVELOPMENTS
LTD. and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes Landlord: **MNRL-S, LRSD, OLRD, FFL**
Tenant: **MNDCT, MNSD, FFT**

Introduction

This hearing dealt with the Landlord's Application under the *Residential Tenancy Act* (Act) for:

1. A Monetary Order to recover money for unpaid rent – holding security deposit under sections 26, 38, 46, and 67 of the Act; and,
2. Recovery of the application filing fee under section 72 of the Act.

This hearing also dealt with the Tenant's cross Application under the Act for:

1. An Order for compensation for a monetary loss or other money owed under section 67 of the Act;
2. An Order for the return of part or all of the security deposit and/or pet damage deposit under section 38 of the Act; and,
3. Recovery of the application filing fee under section 72 of the Act.

Manager M.M., advocate R.M. attended the hearing for the Landlord.

Tenant C.E. attended the hearing for the Tenant.

Service of Notice of Dispute Resolution Proceeding (Proceeding Package)

The Landlord testified that they served the Tenant with their Proceeding Package and evidence by Canada Post registered mail on August 6, 2024. The Landlord referred me to a proof of service form, and Canada Post customer receipt and tracking number

attesting to this service. The Tenant confirmed receipt. I find that the Tenant was deemed served with the Proceeding Package and evidence on August 11, 2024 in accordance with sections 89(1)(c) and 90(a) of the Act.

The Tenant testified that they served the Landlord with their Proceeding Package and evidence by Canada Post registered mail on September 23, 2024. The Tenant sent a second evidence package by Canada Post registered mail on October 10, 2024. The Tenant referred me to two Canada Post tracking numbers attesting to this service.

The Landlord confirmed receipt of both packages. I find that the Landlord was deemed served with the Proceeding Package and evidence on September 28, 2024 and October 15, 2024 respectively in accordance with sections 88(c), 89(1)(c), and 90(a) of the Act.

Issues to be Decided

Landlord:

1. Is the Landlord entitled to a Monetary Order to recover money for unpaid rent?
2. Is the Landlord entitled to hold some or all of the Tenant's security deposit?
3. Is the Landlord entitled to recovery of the application filing fee?

Tenant:

1. Is the Tenant entitled to an Order for compensation for a monetary loss or other money owed?
2. Is the Tenant entitled to an Order for the return of part or all of the security deposit?
3. Is the Tenant entitled to recovery of the application filing fee?

Background and Evidence

I have reviewed all written and oral evidence and submissions presented to me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this decision.

The parties agreed the periodic tenancy began on January 1, 2024, and ended on July 3, 2024. Monthly rent when the tenancy ended was \$2,117.00 payable on the last day of each month. A security deposit of \$1,058.50 was collected at the start of the tenancy and is still held by the Landlord.

The Landlord testified that the Tenant gave notice to vacate on June 2, 2024 by text message.

The Landlord uploaded a copy of the condition inspection report. It shows that a move-in condition inspection was completed on January 8, 2024 with both parties, and the Landlord said they personally served a copy of the move-in condition inspection report to the Tenant within one week after the inspection was completed.

The Tenant said that the move-in condition inspection was not done. They believe that the move-in condition inspection report was falsified as they did not sign anything.

The condition inspection report shows that a move-out condition inspection report was completed on July 31, 2024. The Landlord said their accounting department required them to write that date on the report. Both parties confirmed that the move-out condition inspection was completed on July 3, 2024, and a copy was provided to the Tenant on that same date.

Both parties agreed that:

- the Tenant provided their forwarding address on the move-out condition inspection report on July 3, 2024;
- the Landlord did not have an outstanding monetary order against the Tenant at the end of the tenancy; and,
- the Tenant did not agree in writing that the Landlord could keep some or all of their security deposit.

The Landlord secured a new tenant who began their tenancy on July 15, 2024. The Landlord seeks half a month's rent, \$1,058.50, from the Tenant for unpaid rent in July.

The Tenant paid a \$50.00 deposit for a parking FOB to the building. The Tenant returned the FOB, but this deposit was not returned to the Tenant.

The tenancy agreement stipulates that the Tenant is responsible for their own hydro costs in the rental unit, and the Landlord uploaded an unpaid hydro bill from the Tenant's rental unit for which they claim compensation of \$91.05 from the Tenant.

The Tenant had agreed that they owed the Landlord rent for the month of July, but the Tenant submitted it sounded like the Landlord found someone to move in earlier, so they do not agree that they owe rent for July.

The Tenant stated that they paid a moving company \$2,400.00 to move them out of the rental unit early. The Tenant uploaded a receipt of payment to the moving company showing a balance of \$2,630.00. The Tenant said they were pushed to move out early. If the Tenant knew that the new tenant would start their tenancy later, then the Tenant would not have hired a moving company, and would have done the move themselves.

The Tenant agrees that they owe the Landlord for the unpaid hydro bill totaling \$91.05.

The \$50.00 FOB deposit has not been returned to the Tenant.

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

Is the tenant entitled to a Monetary Order for damage or loss under the Act, regulation or tenancy agreement?

Under section 67 of the Act, when a party makes a claim for damage or loss, the burden of proof lies with the applicant to establish the claim. In this case, to prove a loss, the Tenant must satisfy the following four elements on a balance of probabilities:

1. Proof that the damage or loss exists;
2. Proof that the damage or loss occurred due to the actions or neglect of the landlord in violation of the Act, Regulation or tenancy agreement;
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
4. Proof that the tenant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

The Tenant paid a \$50.00 deposit for a parking garage FOB. Section 6 of the *Residential Tenancy Regulation* (Regulation) states if a landlord provides a tenant with a key or other access device, the landlord may charge a fee that is refundable upon return of the key or access device. The parties confirmed that the Tenant returned the FOB.

I find that the Tenant has proven all elements noted above on a balance of probabilities and is entitled to the return of the refundable fee for the parking garage FOB totaling \$50.00.

The Tenant claims compensation to pay for the movers they hired to vacate their rental unit. The Tenant has not satisfied me that this damage or loss occurred due to actions or neglect on the part of the Landlord in violation of the Act, Regulation, or tenancy agreement. I find they chose to use this moving company as personal demands in their life were significant. Moving costs are the Tenant's responsibility, and the Tenant chose this option of their own volition. I decline to grant compensation to the Tenant for this part of their claim.

Based on the testimonies of the parties, and on a balance of probabilities, I find that the Tenant is entitled to a refund of **\$50.00** for the parking garage FOB under section 67 of the Act.

Is the tenant entitled to a Monetary Order for the return of all or a portion of their security deposit?

Section 38 of the Act sets out the obligations of a landlord in relation to a security deposit held at the end of a tenancy.

Section 38(1) requires a landlord to return the security deposit in full or file a claim with the Residential Tenancy Branch (RTB) against it within 15 days of the later of the end of the tenancy or the date the landlord receives the tenant's forwarding address in writing.

Based on the evidence before me, I find the Landlord was served with the Tenant's forwarding address on July 3, 2024. I further find that the Landlord was obligated to obtain the Tenant's written consent to keep the security deposit or to file an application on or before July 18, 2024, 15 days after receiving the Tenant's forwarding address or the tenancy ending.

Sections 38(2) to 38(4) of the Act state:

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- (2) *Subsection (1) does not apply if the tenant's right to the return of a security deposit or a pet damage deposit has been extinguished under section 24 (1) [tenant fails to participate in start of tenancy*

- inspection] or 36 (1) [tenant fails to participate in end of tenancy inspection].*
- (3) *A landlord may retain from a security deposit or a pet damage deposit an amount that*
- (a) the director has previously ordered the tenant to pay to the landlord, and*
- (b) at the end of the tenancy remains unpaid.*
- (4) *A landlord may retain an amount from a security deposit or a pet damage deposit if,*
- (a) at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant...*

The Landlord provided move-in and move-out condition inspection reports demonstrating that both parties participated in these inspections. The Tenant said a move-in condition inspection was not done, but I find that the report clearly has the Tenant's signature on it. I find that move-in and move-out condition inspections were done with both parties. I find that the Tenant did not extinguish their rights in relation to the security deposit. Section 38(2) of the Act does not apply.

The Landlord did not have an outstanding monetary order against the Tenant at the end of the tenancy. Section 38(3) of the Act does not apply.

The Tenant did not agree in writing at the end of the tenancy that the Landlord could keep some or all of the security deposit. Section 38(4) of the Act does not apply.

The Landlord did not repay the security deposit or file a claim with the RTB against the security deposit within 15 days of July 3, 2024, and that none of the exceptions outlined in sections 38(2) to 38(4) of the Act apply.

Therefore, the Landlord is not permitted to claim against the security deposit and must return double the security deposit, **\$2,117.00**, to the Tenant under section 38(6) of the Act. Using the RTB Deposit Interest Calculator, there is **\$23.68** of interest owed on the security deposit.

I will now consider the Landlord's compensation claim for loss under the tenancy agreement.

Is the Landlord entitled to a Monetary Order for unpaid rent?

Section 26 of the Act states that a tenant must pay rent to the landlord, regardless of whether the landlord complies with the Act, regulations or tenancy agreement, unless the tenant has a right to deduct all or a portion of rent under the Act.

Section 45(1) of the Act states that a tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that is not earlier than one month after the date the landlord receives the notice, and 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 Tenant gave notice on June 2, 2024. Based on this notice date, I find the earliest date this tenancy could end was July 31, 2024.

The Landlord did find a tenant whose tenancy began on July 15, 2024. The Landlord seeks rent for half the month of July.

I find the Landlord is entitled to rent from the Tenant up to when the new tenancy began on July 15, 2024.

Under the tenancy agreement, the Tenant was responsible for their utilities. The Tenant agrees that they owe the Landlord for the unpaid utility bill uploaded by the Landlord totaling \$91.05.

Section 67 of the Act states 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. Based on the evidence and testimonies before me, I find that the Landlord has substantiated their claim for unpaid rent totaling \$1,058.50.

Therefore, I find the Landlord is entitled to a Monetary Order for unpaid rent and utilities under section 67 of the Act in the amount of **\$1,149.55**.

Are the parties entitled to recover their application filing fees?

I find both parties are successful in their Applications, and as granting recovery of application filing fees is discretionary under section 72(1) of the Act, I do not grant them recovery of their application filing fees for their claims. Each party must bear the cost of their application filing fees in this matter.

The Tenant's monetary claim is calculated as follows:

Item	Amount
Return of FOB deposit to T	\$50.00
Double security deposit	\$2,117.00
Security deposit interest*	\$23.68
Unpaid rent and utilities to L	-\$1,149.55
Monetary order to Tenant:	\$1,041.13

*The amount of interest in 2024 was 2.7%. Interest is calculated on the original security deposit amount, before any deductions are made, and it is not doubled. Interest was calculated using the Residential Tenancies Online Tools: Deposit Interest Calculator.

Conclusion

I grant a Monetary Order to the Tenant in the amount of \$1,041.13. The Landlord must be served with 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 of British Columbia and enforced as an Order of that Court.

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

Dated: October 17, 2024

Residential Tenancy Branch