



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Ministry of Housing

## **DECISION**

Dispute Codes      For the Landlord: MNRL-S, MNDCL, LRSD, FFL  
For the Tenant: MNSDS-DR, FFT

### Introduction

Pursuant to section 58 of the Residential Tenancy Act (the Act), I was designated to hear a cross application regarding the above-noted tenancy.

The landlord's application pursuant to the Act is for:

- a monetary order for unpaid rent, pursuant to section 26;
- a monetary order for loss under the Act, the regulation or tenancy agreement, pursuant to section 67;
- an authorization to retain the security deposit (the deposit), under section 38; and
- an authorization to recover the filing fee, under section 72

The tenant's application pursuant to the Act is for:

- an order for the landlord to return the deposit, pursuant to section 38; and
- an authorization to recover the filing fee, under section 72

Landlord GP (the Landlord) and tenant VS (the Tenant) attended the hearing. Both parties had a full opportunity to provide affirmed testimony, present evidence, cross examine the other party, and make submissions.

Service of the Landlord's notice of application and evidence (the Landlord's materials)

The Tenant confirmed receipt of the Landlord's materials and that she had enough time to review them.

Based on the testimonies, I find the Landlord served the Landlord's materials in accordance with section 89(1) of the Act.

Service of the Tenant's notice of application and evidence (the Tenant's materials)

The Tenant affirmed she did not serve her materials. The Landlord stated he was not aware of the Tenant's application.

Based on the undisputed testimony, I find the Tenant did not serve her materials.

Section 89(1) states the applicant must serve materials.

As the Tenant did not serve the materials, I dismiss the Tenant's application.

Issues to be Decided

Is the Landlord entitled to:

1. a monetary order for unpaid rent?
2. a monetary order for loss?
3. an authorization to retain the deposit?
4. an authorization to recover the filing fee?

Background and Evidence

While I have turned my mind to the evidence and the testimony of the attending parties, not all details of the submission and arguments are reproduced here. The relevant and important aspects of the claims and my findings are set out below.

Both parties agreed the tenancy started on December 15, 2021 and ended on June 1, 2024. Monthly rent when the tenancy started and until February 28, 2022 was \$800.00 and when the tenancy ended was \$1,200.00. Rent was always due on the first day of

the month. The Landlord received and holds today the \$400.00 deposit. The parties submitted the tenancy agreement into evidence.

The Landlord received the forwarding address via text message by June 12, 2024 and submitted his application on July 19.

The Landlord testified the Tenant verbally authorized him to retain the deposit.

The Tenant said that she did not authorize the Landlord to retain the deposit.

Both parties agreed they did not complete a move in inspection form when the tenancy started.

The rental unit (the unit) was a one-bedroom suite with approximately 500 square feet. The Landlord affirmed it was built around 2003.

The parties agreed the unit was in good condition when the tenancy started.

The Landlord is seeking \$400.00 unpaid rent for December 2021, \$800.00 for January 2022 and the same amount for February, totalling \$2,000.00 in unpaid rent from December 15, 2021 to February 28, 2022.

The Landlord stated the Tenant did not pay rent during these months and he did not ask for the unpaid rent earlier out of kindness, as the Tenant was facing financial difficulties. The Landlord confirmed receipt of all the other rent payments always via e-transfers and testified he did not forgive this debt. The Landlord submitted an undated ledger indicating the Tenant did not pay the rent claimed in this application.

The Tenant said she paid rent for December 2021, January and February 2022 in cash and the Landlord did not issue receipts. The Tenant affirmed that she only opened a bank account in March 2022, as she had recently moved to Canada, and she started paying rent via e-transfer in March of that year. The Tenant stated she does not recall the exact date of payment because the payments were more than 2 years ago, and the Landlord always required rent on the first day of the month.

The Landlord is seeking \$358.79, as the Tenant damaged the kitchen sink drain, and the Landlord paid \$315.00 for a plumber to repair it and \$43.79 for the rental of a machine to repair the same issue in December 2023.

The Tenant testified the prior tenant damaged the kitchen, the Landlord verbally informed her in December 2023 that he was aware the damage was caused by the prior tenant and that she is not responsible for this damage.

The Landlord is seeking \$25.75, as the Tenant damaged the kitchen exhaust fan screens. The Tenant said she did not damage these items.

The Landlord is seeking \$152.36, as the Tenant did not clean the unit when the tenancy ended and the Landlord paid \$40.32 to rent a carpet cleaning machine, \$90.00 for cleaning services and \$22.04 for carpet shampooing solution. The Tenant affirmed the suite was clean when the tenancy ended.

The Landlord is seeking \$75.47, as the Tenant damaged the toilet. The Landlord stated he paid \$19.31 to replace the fill valve, \$28.31 to replace the flush valve and \$27.85 to replace the seat. The Tenant testified she did not damage the toilet.

The Landlord is seeking \$160.12, as the Tenant damaged the kitchen and bathroom faucets. The Tenant said she did not damage the faucets.

The Landlord is seeking \$129.71, as the Tenant is responsible for a mouse infestation in the unit by bringing in dirty furniture and the Landlord paid the amount claimed to purchase mouse traps.

The Tenant affirmed she is not responsible for the mouse infestation, she was not negligent and the basement unit tenant was the one responsible for the infestation. The Tenant stated she is a cleaning supervisor in her job and that she is very clean.

The Landlord submitted a monetary order worksheet indicating a total monetary claim of \$2,502.20, and receipts for all the payments.

### Analysis

Section 7 of the Act states that if a party does not comply with the Act, the Regulations or the tenancy agreement, the non-complying party must compensate the other party for damage or loss that results and that the who claims compensation must minimize the losses.

Policy Guideline 16 sets out the criteria which are to be applied when determining whether compensation for a breach of the Act or the tenancy agreement is due. It states the applicant has to prove the respondent failed to comply with the Act or the agreement, the applicant suffered a loss resulting from the respondent's non-compliance, and the applicant proves the amount of the loss and reasonably minimized the loss suffered.

Pursuant to Rule of Procedure 6.6, 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 the case is on the person making the claim.

#### Unpaid rent

Section 26(1) of the Act states that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with the Act, unless the tenant has a right to deduct all or a portion of rent under the Act.

I find the Landlord's testimony not convincing, as the Landlord claims he was aware the Tenant did not pay the rent for December 2021, January and February 2022, the tenancy ended on June 1, 2024 and only in July 2024 the Landlord decided to claim for the unpaid rent.

The undated ledger is not credible, as it does not contain a date nor a signature.

I find it reasonable that the Tenant does not recall the exact day she paid rent, as the Landlord submitted this claim 31 months after the alleged non-paid rent. Furthermore, the Tenant sufficiently explained why the rent payments from March 2022 were done via e-transfer.

Considering the above, I find the Landlord's testimony indicating the Tenant did not pay rent does not outweigh the Tenant's testimony indicating that she paid rent.

Thus, I find the Landlord failed to prove that the Tenant did not pay rent, and I dismiss this claim.

### Damage and cleaning claims

Section 32(3) of the Act states that a tenant must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.

Section 37(2)(a) of the Act states the tenant must reasonably clean the rental unit when the tenancy ends.

The Landlord did not submit a move out inspection, nor photographs showing the unit's conditions when the tenancy ended or when the Landlord learned about the alleged damages.

The Landlord's testimony that he paid for the kitchen sink drain in December 2023 and only decided to claim this expense in July 2024 is not credible.

The receipts do not contain any information to prove that the Tenant is responsible for the alleged damages.

The Landlord chose not to call witnesses.

The Tenant vehemently denied that she is responsible for all the alleged damage and cleaning issues.

Thus, I find the Landlord failed to prove the alleged Tenant's failure to comply with the Act or the agreement and I dismiss all the claims for damage and cleaning expenses.

### Deposit

I accept the uncontested testimony that the Landlord received the forwarding address in writing by June 12, 2024.

Section 38(4) allows a landlord to retain from a deposit if, at the end of the tenancy, the tenant agrees in writing that the landlord may retain an amount to pay a liability or obligation of the tenant. This section specifically states the authorization from the tenant must be in writing.

If a landlord does not have the tenant's agreement in writing to retain the deposit, section 38(1) of the Act states that within 15 days of either the tenancy ending or the

date that the landlord receives the tenant's forwarding address in writing, whichever is later, the landlord must either repay any security or pet damage deposit or make an application for dispute resolution claiming against the security deposit or the pet damage deposit.

Section 38(6) of the Act states that if the landlord does not return the deposit or file a claim against the tenant within fifteen days, the landlord must pay the tenant double the amount of the deposit.

Policy Guideline 17 states that “If the landlord does not return or file for dispute resolution to retain the deposit within fifteen days, and does not have the tenant’s agreement to keep the deposit, the landlord must pay the tenant double the amount of the deposit.”

Policy Guideline 17 also states “The arbitrator will order the return of a security deposit, or any balance remaining on the deposit, less any deductions permitted under the Act, on a landlord’s application to retain all or part of the security deposit unless the tenant’s right to the return of the deposit has been extinguished under the Act.”

As the Landlord received the forwarding address on June 12, 2024 and only submitted this application on July 19, in accordance with section 38(6)(b) of the Act, I find the Tenant is entitled to double the Deposit.

According to the deposit interest calculator (available at <http://www.housing.gov.bc.ca/rtb/WebTools/InterestOnDepositCalculator.html>), the interest accrued on the deposit is \$16.34.

Under these circumstances and in accordance with section 38(6)(b) of the Act, I find the Tenant is entitled to a monetary award of \$816.34 (double the deposit of \$400.00 plus the interest accrued).

#### Filing fee and summary

The Landlord must bear the cost of the filing fee, as the Landlord was not successful in any of his claims.

In summary, I award the Tenant \$816.34.

Conclusion

Per section 38 of the Act, I award the Tenant \$816.34. The Tenant is provided with this order in the above terms and the Landlord must be served with this order. 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.

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 10, 2024

---

Residential Tenancy Branch