



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Dispute Codes**

Tenant's Application made November 28, 2016: MNSD; MNDC

Landlord's Application made February 14, 2017: MNR; FF

### **Introduction**

This Hearing was scheduled to consider cross-applications. The Tenant seeks return of the security deposit, an "electricity deposit", and compensation for the cost of cancelling post-dated cheques.

The Landlord seeks unpaid rent and recovery of the cost of the filing fee.

Both parties provided affirmed testimony at the Hearing. They each acknowledged receipt of the other party's Notice of Hearing documents and documentary evidence.

### **Issue(s) to be Decided**

Did the Landlord breach Sections 38 and 67 of the Act?

Did the Tenant breach Section 67 of the Act?

### **Background and Evidence**

The parties agreed on the following facts:

- The tenancy began on May 1, 2016. It was a fixed term lease, expiring April 30, 2017. Monthly rent was \$1,650.00, due on the 1<sup>st</sup> day of each month. The Tenant paid a security deposit in the amount of \$825.00 and an "advance payment of electricity and internet" in the amount of \$300.00.
- The Tenant moved out of the rental unit at the end of October, 2016. The Tenant testified that she moved out on October 20, 2016. The Landlord stated that she moved out on October 28, 2016. In any event, the Tenant paid full rent for the month of October, 2016.
- The Landlord re-rented the rental unit for November 1, 2016.

- The Landlord received the Tenant's forwarding address at the end of the tenancy in October, 2016.

The Tenant testified that the Landlord refused to return her post-dated cheques and therefore she was required to put a "stop payment" on those cheques. The Tenant provided copies of her bank statements in evidence.

The Tenant stated that she paid \$130.00 towards utilities during the tenancy and requests return of the balance of \$170.00 from the "electricity deposit".

The Tenant stated that she found another tenant for the rental unit (the "new tenant") and that the new tenant signed a lease with the Landlord.

The Tenant seeks a monetary award, calculated as follows:

Double the amount of the security deposit	\$1,650.00
Return of the balance of the "electricity deposit"	\$170.00
Cost of cancelling 6 post-dated cheques	<u>\$60.00</u>
Total claim	<b>\$1,880.00</b>

The Landlord testified that he initially agreed that the Tenant could sublet the rental unit and therefore the Tenant would remain ultimately responsible to fulfill the terms of the lease until the end of the lease. The Landlord stated that he agreed that the new tenant would pay rent to the Tenant directly and that the Landlord would cash the Tenant's post-dated cheques when rent was due.

He stated that the Tenant "begged to simplify the procedure" and have the new tenant pay the Landlord directly. The Landlord entered into a new lease with the new tenant, but stated that he did so on the condition that the "new tenant would stay good until April 30, 2017"; and if the new tenant breached the new lease, the Tenant would be responsible for the lease until April 30, 2017. The Landlord testified that the Tenant initially agreed to these terms, and later decided to cancel the post-dated rent cheques.

The Landlord testified that the new tenant is still living in the rental unit and paying rent.

The Landlord submitted that the Tenant "never verbally or in writing terminated the agreement" and that the Tenant "abandoned the rental unit on October 28, 2016". The Landlord seeks a monetary award in the amount of **\$9,900.00** for 6 months of unpaid rent.

## **Analysis**

### **Regarding the Tenant's Application:**

The Landlord required the “electricity deposit” as insurance against unpaid utilities. I find that the “electricity deposit” referred to in the tenancy agreement is in fact a form of security deposit. Section 20 (b) of the Act prohibits a landlord from requiring or accepting more than one security deposit with respect to a tenancy. There are other provisions in the Act for dealing with unpaid utilities.

The Act contains comprehensive provisions on dealing with security deposits. Under Section 38 to the Act, the Landlord is required to handle the security deposit as follows:

38 (1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of

(a) the date the tenancy ends, and

(b) the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one of the following:

(c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;

(d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

...

(6) If a landlord does not comply with subsection (1), the landlord

(a) may not make a claim against the security deposit or any pet damage deposit, and

(b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

[Reproduced as written.]

\*\* I note that paragraph 4 of the tenancy agreement used by the parties expresses this portion of the Act as well.

Based on both parties' testimony, I find that the tenancy ended on October 31, 2016, and that the Landlord entered into a new tenancy agreement with the new tenant effective November 1, 2016. Based on both parties' testimony, I find that the Landlord did not return the security deposit, or make a claim against it, within the time frame provided in Section 38(1) of the Act.

Therefore, I find the Landlord has breached Section 38 of the Act and that the Tenant is entitled to the compensation provided in Section 38(6) of the Act, equivalent to double the amount of the security deposit, calculated as follows:

$$[\$825.00 \text{ (security deposit)} + \$170.00 \text{ (electricity deposit)}] \times 2 = \$1,990.00.$$

Section 67 of the Act provides:

**Director's orders: compensation for damage or loss**

**67** Without limiting the general authority in section 62 (3) [*director's authority respecting dispute resolution proceedings*], if damage or loss results from a party not complying with this 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.

[reproduced as written]

Schedule 5(4) of the regulations provide that a landlord must return to the tenant on or before the last day of the tenancy any post-dated cheques for rent that remain in the possession of the landlord. If the landlord does not have a forwarding address for the tenant and the tenant has vacated the premises without notice to the landlord, the landlord must forward any post-dated cheques for rent to the tenant when the tenant provides a forwarding address in writing.

I find that the Landlord did not comply with Schedule 5(4) of the regulation and that the Tenant is entitled to recover the cost she incurred to cancel the post-dated cheques.

The Tenant has established a monetary award, calculated as follows:

Compensation pursuant to Section 38 of the Act:	\$1,990.00
Compensation pursuant to Section 67 of the Act:	<u>\$60.00</u>

TOTAL MONEATRY AWARD

\$2,050.00

Regarding the Landlord's Application:

I do not find that the Tenant remains responsible for rent owed under her tenancy agreement with the Landlord. I do not find that the Tenant entered into a sub-tenancy agreement with the new tenant. The Landlord acknowledged that a new tenancy agreement began with the new tenant on November 1, 2016. As stated above, I find that the Landlord's tenancy with the Tenant ended on October 31, 2016.

I find that the Tenant owes no rent to the Landlord. If the new tenant does not pay rent to the Landlord under the new tenancy agreement, then the Landlord may make a claim against the new tenant.

Conclusion

The Landlord's Application is dismissed.

I hereby provide the Tenant with a Monetary Order in the amount of **\$2,050.00** for service upon the Landlord. This Order may be filed in the Provincial Court of British Columbia (Small Claims 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 *Residential Tenancy Act*.

Dated: March 15, 2017

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Residential Tenancy Branch