



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

<b><u>Dispute Codes</u></b>	For the landlord:	MNDC-S, MNR-S, FF
	For the tenant:	MNSDS-DR, FF

### **Introduction**

This hearing was convened as the result of the cross applications of the parties for dispute resolution seeking remedy under the Residential Tenancy Act (Act).

The landlord applied for the following:

- compensation for a monetary loss or other money owed;
- a monetary order for unpaid rent;
- authority to retain the tenant's security deposit; and
- to recover the cost of the filing fee.

The tenant applied for the following:

- a return of her security deposit; and
- to recover the cost of the filing fee.

The landlord, the tenant and the tenant's advocate attended the hearing. The hearing process was explained to the parties and an opportunity was given to ask questions about the hearing process.

### **Preliminary and Procedural Matters-**

#### **Landlord's application –**

At the outset of the hearing, the landlord was advised that his application was being refused, pursuant to section 59(5)(c) of the Act because the landlord's application did not provide sufficient particulars of his claim for compensation, as is required by section

59(2)(b) of the Act. Additionally, Rule 2.5 of the Residential Tenancy Branch Rules of Procedure (Rules) states that the applicant must submit a detailed calculation of any monetary claim being made and copies of all other documentary and digital evidence to be relied on in the proceeding. Applicants are provided with instructions in the application package as to these evidence requirements.

The objective of the Rules is to ensure a fair, efficient, and consistent process for resolving disputes for landlords and tenants.

Specifically, the landlord failed to provide a breakdown of the amount claimed of \$22,636.64 at the time the landlord applied on or about November 4, 2020, or at any time from the date of his application.

Additionally, the landlord failed to provide his evidence with his application and serve to the tenant in one package, as required by the Rules. The landlord's evidence was not served to the tenant and the RTB until on or about January 28, 2021.

I find that proceeding with the landlord's claim at this hearing would be prejudicial and procedurally unfair to the tenant, as the absence of particulars that set out how the landlord arrived at the amounts being claimed makes it difficult, if not impossible, for the tenant to adequately prepare a response to the landlord's claim. I note the landlord applied on November 4, 2020, which provided significant time for the landlord to comply with Rule 2.5, however, he failed to do so.

Both parties have the right to a fair hearing and the respondent is entitled to know the full particulars of the claim made against them at the time the applicant submits their application.

The landlord is at **liberty to reapply** but is reminded to provide full particulars of his monetary claim.

I do not grant the landlord the recovery of the cost of the filing fee as I have not considered the merits of his application.

### **Tenant's application –**

An applicant in a dispute resolution proceeding must give a copy of their application to the other party within 3 days of making it, or within a different period specified by the director.

Under section 89(1) of the Act, the application for dispute resolution must be given to the other party, by personal service to that party, by leaving a copy with an agent of the landlord, or by sending the documents by registered mail to the other's address or to the address where the landlord carries on business as a landlord.

In this case, the tenant and advocate confirmed that they did not see the email from the Residential Tenancy Branch (RTB) containing the application and notice of hearing to serve the landlord until three weeks prior to the hearing. Their application was made on or about November 16, 2021.

Additionally, the landlord said he had not received the tenant's application and the tenant could not provide sufficient proof of the service.

Due to the above, I therefore find the tenant submitted insufficient evidence that she served the landlord with her application for dispute resolution and notice of this hearing in a manner required by the Act.

Both parties have a right to a fair hearing and the landlord would not be aware of the hearing without having been served the Notice of a Dispute Resolution Hearing and application as required by the Act.

I therefore dismiss the tenant's application, **with leave to reapply**.

Leave to reapply does not extend any applicable time limitation deadlines.

### **Tenant's security deposit –**

I reviewed and considered Residential Tenancy Policy Guideline 17. This Guideline states that the arbitrator will order the return of a security deposit on a landlord's application to retain all or part of the security deposit.

As I have refused the landlord's application and the landlord confirmed receiving the tenant's written forwarding address on RTB form 47, I make the following order:

Pursuant to section 62(3) and in consideration of Residential Tenancy Policy Guideline 17 C., **I order** the landlord to return the tenant's security deposit of \$1,720, within 15 days of this Decision.

To give effect to this order, I **grant** the tenant a monetary order in the amount of \$1,720. The final, legally binding monetary order is included with the tenant's Decision in the event the landlord fail to comply with my order.

The monetary order is of no force or effect if the landlord returns the tenant's security deposit, as ordered.

Should the landlord fail to comply, the order may be served upon the landlord and filed in the Provincial Court of British Columbia (Small Claims) for enforcement purposes. The landlord is advised that costs of such enforcement are recoverable from the landlord.

### **Cautions to the landlord –**

The landlord was informed at the hearing that the amount of the security deposit he collected was double the amount allowed under the Act. A landlord may only collect a security deposit in the amount up to half of the monthly rent, instead of the entire monthly rent as is the case here.

The landlord was informed that several other terms in the written tenancy agreement and addendum he prepared violated the Act and were not enforceable. Parties may not contract out of the terms of the Act.

I informed the landlord that he should familiarized himself with his legal obligations if he elects to continue doing business as a landlord in British Columbia.

I inform the landlord that although he is granted liberty to make another application for dispute resolution, he may not claim against or continue to keep the tenant's security deposit. The landlord is legally required to return the tenant's security deposit.

### **Conclusion**

The landlord's application has been refused pursuant to sections 59(5)(c) and 59(2)(b) of the Act. The landlord is at liberty to reapply for his monetary claim, however, he may not claim against the tenant's security deposit which the landlord has been ordered to return in full as described above.

The landlord is directed to return the tenant's security deposit of \$1,720, within 15 days of this Decision.

The tenant is granted a monetary order in the amount of \$1,720, which is of no force or effect if the landlord returns the full amount of the tenant's security deposit.

The tenant's application is dismissed, with leave to reapply, due to service issues as described above. The tenant has leave to reapply, although I have ordered the return of her security deposit, as the tenant also indicated another monetary claim within her application.

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*. Pursuant to section 77 of the Act, a decision or an order is final and binding, except as otherwise provided in the Act.

Dated: February 23, 2021

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Residential Tenancy Branch