



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

<u>Parties</u>	<u>File No.</u>	<u>Codes:</u>
(L) G.K.	310034059	MNRL-S, FFL
(T) C.S.	910035735	MNDCT, MNSD

### Introduction

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

On April 9, 2021, the Landlord applied for:

- a monetary order for unpaid rent in the amount of \$1,800.00, holding the security deposit to apply to this claim; and
- recovery of the \$100.00 application filing fee.

On June 13, 2021, the Tenant applied for:

- a monetary order for damage or compensation under the Act of \$3,030.51; and
- a monetary order for the return of her \$900.00 security deposit.

The Tenant and the Landlord appeared at the teleconference hearing and gave affirmed testimony. I explained the hearing process to the Parties and gave them an opportunity to ask questions about the hearing process. During the hearing the Tenant and the Landlord were given the opportunity to provide their evidence orally and respond to the testimony of the other Party. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch (“RTB”) Rules of Procedure (“Rules”); however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

The Tenant said that she received the Landlord’s Notice of Hearing documents and evidence that he had emailed to her on April 21, 2021. However, the Landlord said that

he did not receive the Tenant's Notice of Hearing documents or evidence. It turned out that the Tenant used the wrong postal code in sending her documents to the Landlord by registered mail.

Rule 3.1 requires an applicant to serve each respondent, as follows:

### **3.1 Documents that must be served with the Notice of Dispute Resolution Proceeding Package**

The applicant must, within three days of the Notice of Dispute Resolution Proceeding Package being made available by the Residential Tenancy Branch, serve each respondent with copies of all of the following:

- a) the Notice of Dispute Resolution Proceeding provided to the applicant by the Residential Tenancy Branch, which includes the Application for Dispute Resolution;
- b) the Respondent Instructions for Dispute Resolution;
- c) the dispute resolution process fact sheet (RTB-114) or direct request process fact sheet (RTB-130) provided by the Residential Tenancy Branch; and
- d) any other evidence submitted to the Residential Tenancy Branch directly or through a Service BC Office with the Application for Dispute Resolution, in accordance with Rule 2.5 [Documents that must be submitted with an Application for Dispute Resolution].

Based on her failure to serve the Landlord with her Notice of Hearing documents and evidence, and pursuant to sections 62 and 89 of the Act, **I dismiss the Tenant's application without leave to reapply.**

### Issue(s) to be Decided

- Is the Landlord entitled to a monetary order, and if so, in what amount?
- Is the Landlord entitled to recovery of the Application filing fee?

### Background and Evidence

The Parties agreed that the fixed-term tenancy began on March 1, 2021, and was to run to August 1, 2021, with a monthly rent of \$1,800.00, due on the first day of each month. The Parties agreed that the Tenant paid the Landlord a security deposit of \$900.00, and

no pet damage deposit. However, they also agreed that the tenancy ended when the Tenant moved out on March 9, 2021, because of the issues for which she claimed compensation in her application.

**Landlord's Claim → Monetary Order for Unpaid Rent → \$1,800.00**

In the hearing, the Landlord explained his claim, as follows:

Me and [the Tenant] had an agreement: we signed a contract five days before she moved in. We agreed upon \$1,800.00 after she looked at the suite. Preceding that, she moved in on the 1<sup>st</sup>, after she gave a security deposit, but I had yet to receive the rent.

Beyond that, I started getting complaints from her about the place. Then communication broke down, whereas I told her that she was free to leave - that I wouldn't hold her to the contract. If she stayed until the middle of the month, I'd put the suite back for rent.

I hadn't received her \$1,800.00, and communication broke down. She didn't tell me what she was doing. I asked her multiple times. I didn't receive anything back – not that she was staying. After days and days of nobody being there, not answering the door, no sign of anybody living in here....

On the 15<sup>th</sup>, I knocked. It had been a few days since I saw lights on. I went into the suite and found a couple pieces of junk furniture. I tried to call [the Tenant], but had no replies or response. So, I took it upon myself to remove the items she left behind. I have a receipt submitted in regard to that - a waste management /junk removal receipt.

So, I'm looking for the contract having been breached and that she left without saying a word. Compensation for not being able to rent my suite out and her not even letting me know what was going on.

We had another dispute where she was asking for damages herself, and in that file - she sent it to my old address - so I didn't know about it, and didn't attend the meeting. I still ended up winning, because [the Tenant] told the arbitrator that she had left on her own accord. The arbitrator said that there's nothing that the RTB can do for that.

The two days they were there, I received complaints about extremely loud noises and smoking.

I note that the previous decision was dismissed, because the Tenant had applied for an order for emergency repairs, but she had moved out. The other arbitrator found that the Tenant's application was pointless, as she was no longer a tenant in the rental unit, therefore the application was dismissed.

The Tenant replied to the Landlord's testimony, as follows:

Well for all the reasons I will say why I moved out from there, which is because he failed to provide a heat and safety – no heating or lock on the main door. These are my two main concerns. Someone broke into the basement suite; they stole my iPad. There was no heating or appropriate lock and also because he didn't do anything to accommodate me. He just gave me portable heaters - the small ones; and for the lock, he was about to send somebody, but he didn't.

The Tenant acknowledged that she did not pay any rent to the Landlord. She said:

No, I didn't pay the rent for those reasons. Why would I pay the rent if I'm not going to stay there, and if he's not going to do the emergency repairs? I sent a letter. He read it and he left it on the counter, while we met in the basement suite.

### Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on a balance of probabilities, I find the following.

Rule 6.6 sets out that the person making the claim bears the onus of proving their case on a balance of probabilities. In order to do so, applicants must present sufficient evidence at the hearing to support their claim, meeting this standard of proof.

Section 26 of the Act states: "A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with the Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent." There is no evidence before me that the Tenant had a right to deduct any portion of the rent from the monthly rent due to the Landlord.

Based on the evidence and authorities before me, I find that the Landlord is successful

in his Application, as I find that the Tenant breached section 26 of the Act by not paying the rent owing to the Landlord in March 2021. Accordingly, I award the Landlord with \$1,800.00 in unpaid rent from the Tenant, pursuant to section 67 of the Act. I also award the Landlord recovery of the \$100.00 Application filing fee from the Tenant, pursuant to section 72 of the Act for a total award of **\$1,900.00**.

I find that this claim meets the criteria under section 72 (2) (b) of the Act to be offset against the Tenant's **\$900.00** security deposit in partial satisfaction of the Landlord's monetary award. The Landlord is authorized to retain the Tenant's security deposit, and further, I grant him a Monetary Order of **\$1,000.00** against the Tenant for recovery of the remaining amount of the award.

### Conclusion

The Tenant is unsuccessful in her application, because she failed to serve the Landlord with her Notice of Hearing documents and documentary submissions. As a result, the Tenant's application is dismissed without leave to reapply.

The Landlord is successful in his Application, because he provided sufficient evidence to meet his burden of proof on a balance of probabilities. The Landlord is awarded recovery of \$1,800.00 in unpaid rent, pursuant to section 67. The Landlord is also awarded recovery of the \$100.00 Application filing fee, for a total award of **\$1,900.00**.

The Landlord is authorized to retain the Tenant's \$900.00 security deposit in partial satisfaction of this award. I grant the Landlord a Monetary Order of **\$1,000.00** from the Tenant for the remaining amount she owes the Landlord. This Order must be served on the Tenant by the Landlord and may be filed in the Provincial Court (Small Claims) 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: September 14, 2021

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Residential Tenancy Branch