



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

## **DECISION**

Dispute Codes      MNDCL-S, FFL

### Introduction

Pursuant to section 58 of the Residential Tenancy Act (the Act), I was designated to hear an application regarding the above-noted tenancy. The landlord applied for:

- a monetary order for loss under the Act, the Residential Tenancy Regulation (the regulation) or tenancy agreement, pursuant to section 67;
- an authorization to retain a portion of the security and pet damage deposits (the deposits), under section 38; and
- an authorization to recover the filing fee, under section 72.

Tenant AB (the tenant) and landlord RR (the landlord) attended the hearing. All were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

At the outset of the hearing all the parties were clearly informed of the Rules of Procedure, including Rule 6.10 about interruptions and inappropriate behaviour, and Rule 6.11, which prohibits the recording of a dispute resolution hearing. All the parties confirmed they understood the Rules of Procedure.

Per section 95(3) of the Act, the parties may be fined up to \$5,000.00 if they record this hearing: "A person who contravenes or fails to comply with a decision or an order made by the director commits an offence and is liable on conviction to a fine of not more than \$5,000.00."

### Preliminary Issue – Service

The landlord affirmed he served the notice of hearing and the evidence (the materials) to the tenant via email. The tenant stated that he had enough time to review the materials.

Based on the testimony offered by both parties, I find the landlord served the materials in accordance with section 89(1) of the Act.

The tenant did not serve the response evidence submitted to the Residential Tenancy Branch (RTB).

Per Rule of Procedure 3.15, I excluded the tenant's response evidence.

#### Preliminary Issue – Correction of the Landlord's Name

At the outset of the hearing the landlord corrected the spelling of his first name.

Pursuant to section 64(3)(a) of the Act, I have amended the landlord's application.

#### Issues to be Decided

Is the landlord entitled to:

1. a monetary order for loss?
2. an authorization to retain a portion of the deposits?
3. an authorization to recover the filing fee?

#### Background and Evidence

While I have turned my mind to the accepted 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 landlord's claims and my findings are set out below. I explained rule 7.4 to the attending parties; it is the landlord's obligation to present the evidence to substantiate the application.

Both parties agreed the tenancy started on January 15, 2021 and ended on June 30, 2022. Monthly rent was \$2,295.00, due on the first day of the month. The landlord collected a security deposit in the amount of \$1,147.50 and a pet deposit in the amount of \$1,147.50. The landlord currently holds the deposits in the total amount of \$2,295.00 in trust. The tenancy agreement was submitted into evidence. It indicates:

10. The tenant agrees to be responsible for any/all fines associated with noncompliance of the strata rules, bylaws and not complying with required access for smoke alarm, sprinkler, dryer vent or any other mandatory inspection via the strata corporation. The tenants will be provided with current strata bylaws and rules.

The tenant did not give his forwarding address to the landlord and confirmed it during the hearing. The forwarding address is recorded on the cover page of this decision.

The tenant authorized the landlord to retain the deposits until the decision of this application.

The landlord is claiming \$694.58 and \$472.50, as the tenant damaged the rental unit's fire alarm system. The landlord testified the strata inspected the rental unit and notified the landlord about the damage. The tenant said he disconnected the speaker wires because the alarm was constantly going off before 6:00 AM.

The landlord submitted a letter from the strata dated June 8, 2021:

Attached is a copy of an invoice [...] in the amount of \$694.58 associated with in-suite inspection regarding trouble call on the [rental unit's floor] that occurred on March 18, 2021, but no access was granted for the [rental unit]. Although this invoice has been paid, this is not a strata corporation expense.

Please forwarding a reimbursement cheque in the above noted amount made payable to the strata corporation.

The invoice dated March 30, 2021 states: "03/18 trouble call out and inspection consumable and truck charges: total amount \$694.58"

The landlord affirmed the strata usually posts notices on the common areas when they do fire inspections. The landlord does not remember if he informed the tenant that he had to be in the rental unit on March 18, 2021. The landlord believes the \$694.58 charge may be for two technicians to inspect the rental unit's floor for three hours. The tenant stated that he was not informed that he would need to be in the rental unit on March 18, 2021.

The tenant testified that he asked for a detailed explanation from the strata regarding the charge of \$695.00 and that he did not receive this information. The tenant said that this charge is not reasonable.

The landlord submitted a letter from the strata dated November 3, 2021:

Attached is a copy of an invoice [...] in the amount of \$472.50 associated with a return visit to test in-suite fire safety and reconnect a tampered annunciator. Although this invoice has been paid, this is not a strata corporation expense.

Please forwarding a reimbursement cheque in the above noted amount made payable to the strata corporation.

The invoice dated April 19, 2021 states: "insuite return testing and inspection consumable and truck charges: \$472.50."

The landlord affirmed that he believes the fire inspection contractor could not enter the rental unit on March 18 and had to return on April 19, 2021. Later the landlord stated the contractor would have to return because he did not have the equipment necessary to repair the alarm system on March 18, 2021.

The landlord is claiming \$200.00, as the tenant received a strata fine. The landlord submitted a letter from the strata dated December 1, 2021:

It has been brought to the council's attention that on October 12, October 17, November 24 and November 29, 2021, the occupant of [the rental unit] knocked on several unit's doors on different floors in the building [...]

The current contemplated fines associates with above infraction(s) total: \$200.00.

The tenant testified that he disputed the strata fine. Both parties agreed the strata has not informed them if the fine was cancelled. The landlord has not paid the fine.

The landlord is claiming \$22.14, as the tenant damaged the thermostat, \$300.00 for cleaning expenses and \$165.00 for blinds replacements (the remaining claims). The tenant agreed to pay the remaining claims.

The landlord submitted a ledger issued by the strata on April 22, 2022 indicating charges for the alarm system in the amounts of \$694.58 on May 27, 2021, \$472.50 on November 18, 2021 and the \$200.00 strata fine on December 15, 2021.

The landlord submitted a monetary order worksheet indicating a total claim of \$1,854.20.

## Analysis

Section 7 of the Act states:

Liability for not complying with this Act or a tenancy agreement

7 (1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

RTB Policy Guideline 16 sets out the criteria which are to be applied when determining whether compensation for a breach of the Act is due. It states:

The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. In order to determine whether compensation is due, the arbitrator may determine whether:

- a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
- loss or damage has resulted from this non-compliance;
- the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
- the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

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.

## Fire alarm

Section 32(3) of the Act states the tenant must repair damages to the rental unit.

Based on the undisputed testimony, the invoices and letters dated June 8 and November 3, 2021, I find that the tenant breached section 32(3) of the Act by damaging the rental unit's fire alarm system and the landlord suffered a loss.

I find the March 30, 2021 invoice has a vague description of the service, as it does not explain what is the 'trouble call'. The tenant asked for a detailed explanation of what is the charge of \$694.58 and the landlord offered a vague testimony ("The landlord believes the \$694.58 charge may be for two technicians to inspect the rental unit's floor for three hours"). Based on this, I find the landlord failed to prove, on a balance of probabilities, that the charge of \$694.58 is due to the tenant's actions.

Thus, I find the landlord failed to prove the loss of \$694.58.

The November 3, 2021 letter specifically informs that the charge of \$472.50 is to test the rental unit's fire safety and reconnect the tampered annunciator. Based on the undisputed testimony and the November 3, 2021 letter and April 19, 2021 invoice, I find the landlord proved, on a balance of probabilities, the loss of \$472.50, as the tenant disconnected the alarm wires and the strata hired a contractor to reconnect the wire.

As such, I award the landlord \$472.50 in compensation for this loss.

#### Strata fine

As the landlord has not paid the fine issued on December 01, 2021 and disputed by the tenant, I find the landlord has not suffered a loss.

I dismiss the landlord's claim.

If the strata confirms the fine, the landlord may submit a new application for this expense.

#### Remaining claims

As the tenant agreed to pay the remaining claims, I order the tenant to pay the landlord \$487.14.

#### Filing fee and summary

As the landlord was successful in this application, the landlord is entitled to recover the \$100.00 filing fee.

Item	Amount \$
Fire alarm	472.50
Remaining claims	487.14
Filing fee	100.00
<b>Total:</b>	<b>1,059.64</b>

### Deposit

RTB Policy Guideline 17 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; or

[...]

The Residential Tenancy Act provides that where an arbitrator orders a party to pay any monetary amount or to bear all or any part of the cost of the application fee, the monetary amount or cost awarded to a landlord may be deducted from the security deposit held by the landlord and the monetary amount or cost awarded to a tenant may be deducted from any rent due to the landlord.

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 \$13.37.

I award the landlord to retain \$1,059.64 from the deposits. As the landlord retained the deposits in the amount of \$2,295.00, the landlord must return the balance of the deposits in the amount of \$1,248.73.

### Conclusion

Pursuant to sections 38, 67 and 72 of the Act, I authorize the landlord to retain \$1,059.64 from the deposits in total satisfaction of the losses incurred.

Pursuant to section 38 of the Act, I grant the tenant a monetary award in the amount of \$1,248.73.

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: April 19, 2023

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Residential Tenancy Branch