# Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing

## DECISION

Dispute Codes

File : MNDCT, MNSD, FFT
File MNRL, MNDL, FFL

Introduction

The Tenant seeks the following relief under the *Residential Tenancy Act* (the "*Act*"):

- a monetary order pursuant to s. 67 for compensation or other money owed;
- an order pursuant to s. 38 for the return of the security deposit and/or the pet damage deposit; and
- return of the filing fee pursuant to s. 72.

The Landlord files her own application in which she seeks the following relief under the *Act*:

- a monetary order pursuant to s. 67 for unpaid rent;
- a monetary order pursuant to s. 67 for compensation for damage to the rental unit caused by the tenant, their pets, or guests; and
- return of the filing fee pursuant to s. 72.

X.X. appeared as counsel and agent for the Tenant. K.C. appeared as the Landlord. A.D. appeared as counsel for the Landlord.

The parties affirmed to tell the truth during the hearing. I advised of Rule 6.11 of the Rules of Procedure, in which the participants are prohibited from recording the hearing. I further advised that the hearing was recorded automatically by the Residential Tenancy Branch.

Service of Documents

The parties advise that they served their application materials on the other side. Both parties acknowledge receipt of the other's application materials without objection. Based on the mutual acknowledgments of the parties without objection, I find that pursuant to s. 71(2) of the *Act* that the parties were sufficiently served with the other's application materials.

Issues to be Decided

1) Is the Tenant entitled to the return of her security deposit?
2) Is the Tenant entitled to monetary compensation?
3) Is the Landlord entitled to a monetary order for unpaid rent?
4) Is the Landlord entitled to a monetary order compensating for damage done to the rental unit by the Tenant?
5) Is either party entitled to their filing fee?

Evidence and Analysis

The parties were given an opportunity to present evidence and make submissions. I have reviewed all included written and oral evidence provided to me by the parties and I have considered all applicable sections of the *Act*. However, only the evidence and issues relevant to the claims in dispute will be referenced in this decision.

***General Background***

The parties confirmed the following details with respect to the tenancy:

- The tenancy began on August 28, 2018.
- Prior to February 2023, rent of $4,600.00 was due on the first day of each month.
- A security deposit of $2,300.00 was paid by the Tenant.
- There is some dispute regarding the end of the tenancy, though the parties acknowledge it ended no later than November 30, 2022.

I am provided with a copy of the tenancy agreement. I am advised that the Landlord purchased the property in question in 2020 and that the security deposit was transferred to her when she purchased the property.

I am advised by the parties that the Tenant resided at the rental unit during the school year with her children but returned home during the summer months. The parties further

advise me that the Landlord did not charge the Tenant rent during the summer months and put the rental unit up for short-term rental from June to August. I am told the Landlord retained the income from the short-term rental during the summer months.

***1) Is the Tenant entitled to the return of her security deposit?***

Section 38(1) of the *Act* sets out that a landlord must within 15-days of the tenancy ending or receiving the Tenant's forwarding address, whichever is later, either repay a tenant their security deposit or make a claim against the security deposit with the Residential Tenancy Branch. A landlord may not claim against the security deposit if the application is made outside of the 15-day window established by s. 38. Under s. 38(6) of the *Act*, when a landlord fails to either repay or claim against the security deposit within the 15-day window, the landlord may not claim against the security deposit and must pay the tenant double their deposit.

I am not provided with a copy of the condition inspection report nor is it suggested that the Tenant's right to the security deposit has been extinguished under ss. 24 or 36 of the *Act*. I find that the Tenants right to the security deposit has not been extinguished.

Landlord's counsel acknowledges that the Tenant provided her forwarding address to the Landlord on November 27, 2022. As this was admitted by the Landlord, I find that under s. 71(2) of the *Act* the Tenant provided the Landlord with her forwarding address on November 27, 2022.

Upon review of the information on file and in consideration of Rule 2.6 of the Rules of Procedure, I find the Landlord filed her application on September 7, 2023. Given this, I find that the Landlord failed to comply with the 15-day time limit imposed by s. 38(1) of the *Act* and that the doubling provision under s. 38(6) of the *Act* has been triggered.

I grant the Tenant the double return of her security deposit, including interest to the date of the decision, in the total amount of $4,635.62 (($2,300.00 x 2) + $35.62).

***2) Is the Tenant entitled to monetary compensation?***

Under s. 67 of the *Act*, the Director may order that a party compensate the other if damage or loss result from that party's failure to comply with the *Act*, the regulations, or the tenancy agreement. Policy Guideline #16 sets out that to establish a monetary claim, the arbitrator must determine whether:

1. A party to the tenancy agreement has failed to comply with the *Act*, the regulations, or the tenancy agreement.
2. Loss or damage has resulted from this non-compliance.
3. The party who suffered the damage or loss can prove the amount of or value of the damage or loss.
4. The party who suffered the damage or loss mitigated their damages.

The applicant seeking a monetary award bears the burden of proving their claim.

Tenant's counsel advised that the Tenant is seeking return of two-thirds of the rent paid for September, October, and November 2022.

I am advised by the parties that the Tenant notified the Landlord in August 2022 that her children would not be returning to school in September 2022. Tenant's counsel indicates that the Tenant had some difficulty gaining returning to Canada from overseas. I am further advised by the parties that there was an agreement the Tenant pay $3,500.00 per month for September and October 2022, with the additional time needed for the Tenant to attend the rental unit to clean it out of her belongings.

Tenant's counsel advises that Tenant was unable to return to Canada until November 2023 and that when she did the locks to the rental unit had been changed. I am told that the Tenant could not reside in the rental unit in November 2022 while she cleared the space of her belongings due to this and the Landlord having commenced some repair work. The Tenant's written submissions indicate that she paid $2,200.00 for temporary accommodation from November 14 to 19.

Landlord's counsel directs me to text messages between the Landlord and Tenant, specifically one sent by the Tenant on August 22, 2022, which was argued to constitute the Tenant's notice to end the tenancy. That message states the following:

> Hi [Landlord]
> […]
> Unfortunately Ihunde (sic) will not be back to [the community] for reasons beyond our control. Am sooooo sad. Thought we had one more year. I plan however to come back and empty the house of our property.
> […]
> I ask that you give us until the end of October as I believe I will be able to come beginning of October to clear out.

I have redacted personal identifying information from the reproduction above.

As matters progressed, the Tenant was unable to return to Canada by October 2022 as planned and requested for additional time from the Landlord. I am directed to a text message to this effect from the Tenant to the Landlord dated October 15, 2022. I do not have the Landlord's response to this text message, though the Tenant's evidence includes emails between the parties on October 19 and 20 where the Landlord assisted in providing a letter so that the Tenant could obtain an entry visa into Canada.

The Tenant's evidence also includes an email dated November 8, 2022 in which the Landlord informs the Tenant that she has agreed to extend the term of the tenancy until the end of November but that she had secured a new tenant for December 1, 2022. The Landlord confirmed receiving rent from the Tenant for November on November 8, 2022.

Concurrent to receiving rent, the Landlord advises that she returned to the rental unit to clean and paint the space. The Landlord's evidence includes text messages dated November 2, 2022 between the Landlord and an individual I am told was the painter.

I do not accept that the August 22, 2022 constitutes the Tenant's notice to end the tenancy on October 31, 2022. It contains none of the formal requirements set by s. 52 of the *Act* one would expect of a tenant's notice to end tenancy.

I do, however, accept that the parties came to an agreement in August 2022 under which the parties agreed to end the tenancy on October 31, 2022 and the Tenant would pay rent of $3,500.00 per month. This is clear based on the correspondence between the parties from that time.

On October 15, 2022, the Tenant requested an extension to end the tenancy due to difficulties in returning to Canada. I suspect that Landlord likely did not wish to extend the tenancy beyond the end of the October 2022 given her eagerness to enter the rental unit to repair and prep it for new tenants. However, the Landlord did not deny the request for the extension, nor did she indicate it would be an issue. Rather, she accepted the Tenant's money. Also, on November 8, 2022 she clearly communicated that there would be extension to the end of November 2022 but no later.

It is illogical for the Landlord to now argue the tenancy ended on October 31, 2022, despite accepting the Tenant's rent for November, and also arguing that the Tenant is not entitled to any return of rent for the month given the parties agreement. The Landlord was under no obligation to accept the extension and could have treated

October 31, 2022 as the end of the tenancy. She did not do so. Instead, the Landlord took the Tenant's money, changed the locks, began the process of preparing the rental unit for new occupants, and then denied the Tenant permission to occupy the rental unit when she eventually made it to Canada.

The Landlord de facto took back possession of the rental unit in early November 2022. However, the Landlord is not permitted to change the locks to the rental unit without the Tenant agreeing to the change and providing the Tenant a copy of the new keys. I find that by changing the locks and effectively taking back possession of the rental unit, the Landlord was in breach of s. 31 of the *Act*.

Looking to the Tenant's claims specifically, there is no basis for her to claim return of rent paid to the Landlord from September to November 2022 pursuant to their agreement. Section 26 of the *Act* requires tenants to pay rent in full regardless of whether the Landlord is in breach of the *Act*, tenancy agreement, or the regulations. In other words, the Tenant cannot escape that cost in her tenancy agreement.

Despite this, I find that the Landlord's breach of s. 31 of the *Act* resulted in loss to the Tenant with respect to her accommodation costs while she was briefly in Canada since she was deprived of her right under the tenancy agreement to reside within the rental unit. Based on the written submissions provided to me by Tenant's counsel, I accept the Tenant stayed at a hotel between November 14th and 19th. I find the Tenant is entitled to return of this expense.

The amount listed is $2,200.00, which is not directly supported by receipts in evidence. I find that this amount for 6 days of accommodation is extravagant and not in keeping with the Tenants obligation to mitigate her damages. I find that the Tenant is appropriately compensated for this by granting her accommodation expense of $1,200.00, which is $200.00 for each day she paid to stay at a hotel.

I grant the Tenant $1,200.00 for this portion of her claim.

### *3) Is the Landlord entitled to a monetary order for unpaid rent?*

Landlord's counsel advises that the Tenant had not paid rent promptly and did so in varying amounts throughout the tenancy. I am directed to a series of tables prepared by the Landlord in which I am told summarizes short falls in rent payments for 2021 and 2022. The Landlord claims total arrears of $1,377.00 and I am provided with screenshots for the relevant e-transfers in the Landlord's evidence. Tenant's counsel

raises issue with the accuracy of the summary tables produced by the Landlord relative to the e-transfers history in evidence.

Review of the e-transfers provided by the Landlord show the Tenant gave transfered $3,000.00 twice on September 22, 2021. However, the summary table lists one transfer for that amount on the 22nd. Similarly, an e-transfer in the Landlord's evidence dated October 23, 2021 shows the Landlord received $2,500.00 from the Tenant. This amount is not listed on the summary table at all.

I find that Landlord has failed to prove that the Tenant is in arrears of her obligation to pay rent. Cursory review of the Landlord's own evidence appears to suggest overpayment by the Tenant. I make no findings on whether there was an overpayment by the Tenant and only note that Landlord's own evidence contradicts the accounting summary provided to me. Both issues in the accounting highlighted above exceed the total claim for arrears from the Landlord.

Given these issues, I dismiss this portion of the Landlord's claim without leave to reapply.

4) ***Is the Landlord entitled to a monetary order compensating for damage done to the rental unit by the Tenant?***

The Landlord also seeks costs for cleaning and repairing the rental unit at the end of the tenancy.

Section 37(2) of the *Act* imposes an obligation on tenants at the end of the tenancy to leave the rental unit in a reasonably clean and undamaged state, except for reasonable wear and tear, and to give the landlord all keys in their possession giving access to the rental unit or the residential property. Policy Guideline 1 defines reasonable wear and tear as the "natural deterioration that occurs due to aging and other natural forces, where the tenant has used the premises in a reasonable fashion."

The Landlord's monetary order worksheet claims $656.00 for cleaning the rental unit. As noted above, the Landlord improperly took back possession of the rental unit such that the Tenant was effectively deprived of the opportunity to clean it at the end of the tenancy. Further, the Landlord's evidence of the cleaning expense are e-transfers without explanation of who the recipients were or why the funds were transferred.

I find that the Landlord has failed to prove the Tenant breached s. 37(2) of the *Act* by leaving the rental unit clean. Indeed, it is conceivable that the cleaning was required due after painting the rental unit in early November 2022 while the Tenant was out of country.

The Landlord also seeks $1,101.92 for painting the rental unit. As explained to me by counsel, the painting and general repairs were necessary at the end of the tenancy. It was argued the Tenant caused the damage. However, the Landlord has produced no evidence to support that the damage exceeded reasonable wear and tear. Further, it is conceivable that the damage was caused by the sub-tenants who occupied the rental unit during the summer months and not by the Tenant or her children.

I find that the Landlord has failed to prove that the damage, even if it was caused by the Tenant or her children, constitutes damage that is beyond reasonable wear and tear. As such, the Landlord has failed to prove a breach of s. 37(2) of the *Act*. This portion of the claim is dismissed without leave to reapply.

The Landlord finally claims $150.00 for an internet upgrade. Neither the Landlord nor her counsel provided submissions on this portion of the claim. However, I note that the Tenant paid additional rent for the improved interned service and the Landlord has retained access to the service by covering the upgrade expense. I find the Landlord has failed to prove breach of the *Act*, tenancy agreement or regulations with respect to the internet upgrade. This portion of the claim is dismissed without leave to reapply.

I dismiss the Landlord's monetary claim in its entirety.

***5) Is either party entitled to their filing fee?***

I find that the Tenant had partial success in her application and is entitled to her filing fee. Pursuant to s. 72(1) of the *Act*, I order that the Landlord pay the Tenant's $100.00 filing fee.

I find that the Landlord was unsuccessful in her application. The Landlord's claim for her filing fee is dismissed without leave to reapply.

Conclusion

I grant the Tenant $4,635.62 for double her security deposit plus applicable interest.

I grant the Tenant $1,200.00 for compensation on her monetary claim.

I dismiss the Landlord's claim for unpaid rent without leave to reapply.

I dismiss the Landlord's claim for compensation for damage to the rental unit without leave to reapply.

I grant the Tenant her filing fee of $100.00, which shall be paid by the Landlord.

I dismiss the Landlord's claim for her filing fee without leave to reapply.

In total and pursuant to ss. 38, 67, and 72 of the *Act*, I order that the Landlord pay **$5,935.62** to the Tenant ($4,635.62 + $1,200.00 + $100.00).

It is the Tenant's obligation to serve the monetary order on the Landlord. If the Landlord does not comply with the monetary order, it may be enforced by the Tenant at the BC Provincial 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: October 16, 2023

Residential Tenancy Branch