



# **Dispute Resolution Services**

Residential Tenancy Branch  
Office of Housing and Construction Standards  
Ministry of Housing and Social Development

## **INTERIM DECISION**

**Dispute Codes:** MNR, MNSD, MNDC and FF

### **Introduction**

This application was brought by the landlord seeking a Monetary Order for unpaid rent, loss of rent, cleaning costs and recovery of the filing fee for this proceeding and authorization to retain the security deposit in set off against the balance owed.

Despite having brought the application, the landlord did not call in to the number provided to enable her participation in the telephone conference call hearing. Therefore, it proceeded in her absence.

Given the absence of the applicant landlord, the application is dismissed without leave to reapply.

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

As part of the landlord's application pertained to the security deposit, and as the tenant attended the hearing and requested its return, this matter requires a decision on whether the tenant is entitled to a Monetary Order for return of the security deposit as claimed. The tenant was advised that, as this hearing was convened on the landlord's application, he could not make claim for double the deposit under section 38(6) of the *Act* as he could on his own application. He stated he wanted only his deposit back.

## **Evidence**

This tenancy ran from October 1, 2008 to November 30, 2008. Rent was \$650 per month and the tenant paid a security deposit of \$325 on September 29, 2009.

As a matter of note, as the tenancy ended on November 30, 2008, and as the landlord's application was not made until December 18, 2008, the landlord failed to meet the 15-day time limit set by section 38(1) of the Act with respect to her claim on the security deposit.

During the hearing, the tenant gave evidence that:

1. On November 1, 2008, he gave the landlord verbal notice that he would be vacating at the end of the month and he stated the landlord confirm she understood that notice by asking him the following day to stay;
2. He moved out on November 30, 2008 and wrote to the landlord on December 4, 2008 providing his forwarding address and requesting return of his security deposit;
3. The landlord neither offered nor conducted move-in or move-out condition inspection reports, did not provide a copy of a written rental agreement, and asked him not to tell neighbours he was paying rent, leading the tenant to conclude that the landlord did not have the owner's consent to rent the basement suite;
4. On November 16, 2008, while the tenant was visiting with friends, the landlord, without knocking, forced entry with a hammer, and brandished it in a threatening way as confirmed by a witness written submission;

5. On two occasions, he had awoken to find the landlord in his suite and on another, had come home to find the landlord's three children watching his television.

### **Claims and Analysis**

As noted, the landlord's claim is dismissed without leave.

By virtue of her failure to apply within 15 days, and by virtue of her failure to conduct the conditions inspections, the landlord forfeits any claim to the security deposit.

I find that the tenant is entitled to return of the \$325 security deposit plus \$1.23 interest from October 1, 2008 to date.

### **Conclusion**

Thus, the tenant's copy of this decision is accompanied by a Monetary Order, enforceable through the Provincial Court of British Columbia, in the amount of **\$326.23** for service on the landlord..

February 6, 2009.

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Dispute Resolution Officer