



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing and Social Development

## **DECISION**

Dispute Codes      MNDC, MNSD, FF

### Introduction

This matter dealt with an application by the Tenant for the return of double her security deposit as well as to recover the filing fee for this proceeding. The Landlord applied for a monetary order for compensation for loss of rental income and damages to the rental unit as well as to recover the filing fee for the proceeding and to keep the Tenant's security deposit to offset damages.

### Issues(s) to be Decided

1. Is the Landlord entitled to compensation for damages or loss of rental income and if so, how much?
2. Is the Landlord entitled to keep all or part of the Tenant's security deposit?

### Background and Evidence

The Tenant said she met with the Landlord on October 12, 2008 and agreed to rent a room on the main floor suite of the rental property for \$650.00 per month. The Tenant said the Landlord told her that two other prospective tenants were also considering that suite so the Tenant gave the Landlord a security deposit of \$325.00. The Tenant said the suite had still not been finished in that the bathroom sink and toilet did not work and there was no tub or tiles around the shower area and there was no heat. The Tenant claimed the Landlord gave her permission to store her belongings in the garage on October 18, 2008 and to move a mattress, television and some personal toiletries into a room on the upper floor until November 1, 2008 when the rental unit was supposed to be ready for her to move in.

The Tenant said she spoke to the Landlord again on October 30, 2008 with her husband present and because the other room in the main level suite had not been rented, the Landlord agreed that she could rent the whole suite for \$1,300.00. The Tenant said she agreed to provide the Landlord with a cheque for that amount on November 1, 2008, received keys to the suite from the Landlord and left various items in the suite. The Tenant said that when she arrived on November 1, 2008 she discovered that the Landlord had rented the suite out to two other tenants. The Tenant said that when she called the Landlord about it, he told her that he had re-rented it because she

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had not paid the rent and he asked her to move her belongings. The Tenant said she could not get access to the garage and the Landlord said he would not give her access until she paid him storage fees for the period October 18 – November 1, 2008. The Tenant said the Landlord had a vehicle she had stored removed to hold as “collateral.” The Tenant said she finally got the assistance of the RCMP and removed all of her belongings by November 16, 2008.

The Tenant said she sent the Landlord her forwarding address in writing to his residential address by registered mail on December 16, 2008 and provided a copy of the receipt and tracking number in support. The Tenant also claimed that she did not give the Landlord authorization to keep her security deposit.

The Landlord argued that he rented a room in the upper floor suite to the Tenant and relied on a handwritten receipt for the security deposit in support that said “for rent of the upper floor.” The Landlord claimed that the Tenant stored her belongings in the garage because there was not enough room on the upper floor suite for them. The Landlord also claimed that the fact that the Tenant had many belongings in the upper suite bedroom was some evidence that she was renting that a room on that floor. In any event, the Landlord argued that the Tenant advised him on November 1, 2008 that she did not want to move to the upper floor and therefore he gave the Tenant a letter dated November 2, 2008 in which he claimed he would return the Tenant’s security deposit once she removed all of her belongings and returned her keys and he determined there were no damages to the rental unit.

The Landlord said the Tenant agreed to pay rent for the period October 18 – November 1, 2008. The Landlord said the Tenant had still not moved her belongings and as a result, on November 7, 2008, he gave her a bill for rent and storage for the period October 18 – November 1, 2008 and for November 1 – 7, 2008 as well as a 10 day Notice to End Tenancy for Unpaid Rent. The Landlord said he received a letter from the Tenant dated November 11, 2008 advising him not to enter the room in which she had her belongings stored and advised him she would be filing theft charges for removal of the vehicle he had removed. The Landlord said he advertised the rental unit on Castanet on or about November 15, 2008 and also in a local newspaper on December 18, 2008 but despite his efforts, the rental unit has still not been rented.

The Landlord admitted that he did not do a move in or a move out inspection report with the Tenant but argued that the rental unit was new as of October, 2008 and that no one else had used the room. The Landlord relied on photographs of holes and scratches in the bedroom as well as in the stairwell leading up the upper suite which he claimed the Tenant caused. The Landlord said he determined the cost of repairs by having a restoration company give him an estimate.

The Tenant argued that there was no agreement she would pay rent for the period October 18 – November 1, 2008 but instead that the Landlord offered the upper suite room to her as a courtesy until the main floor suite was ready. The Tenant said she only moved in a mattress, television, clothes and a few toiletries so that she could shower. Consequently, the Tenant argued there was no possible way any of these articles could have caused the damages alleged by the Landlord. The Tenant claimed that there were 5 other people residing in the rental unit as of November 1, 2008 and suggested that any damages to the stair way were more likely caused by them. The Tenant provided copies of photographs of the upper room in which she had her belongings that she said she took on November 4, 2008 that showed there were no damages to the room.

## Analysis

In a previous hearing between these Parties held on December 9, 2008, the Dispute Resolution Officer made findings of fact that the Tenant had agreed to rent the main floor of the rental property from the Landlord but that the Landlord breached their agreement by renting the main floor to other tenants. The Landlord applied for a review of that Decision but his application was dismissed. Consequently, I am not at liberty to substitute these findings of fact with new ones.

Furthermore, I find there is additional evidence of an agreement between the Tenant and the Landlord that the Tenant would rent the main floor. In particular, the Landlord said he agreed on November 2, 2008 to return the Tenant's security deposit because the Tenant did not want to live in upper suite. I find that this supports the Tenant's position and is inconsistent with the Landlord's later position that he wanted to keep the Tenant's security deposit to offset a loss of rental income for that room for November and December, 2008. I also find on a balance of probabilities that the Tenant had keys to the main floor suite as well as some belongings stored there which supports her position that there was an agreement to rent the main floor.

Although the Landlord's security deposit receipt dated October 12, 2008 refers to the "upper suite", I find that by October 30, 2008 there was a verbal agreement that the Tenant would rent the whole main level suite commencing November 1, 2008 for \$1,300.00. The Landlord withdrew his application for rent for October 18 – October 31, 2008. I find that the Landlord is not entitled to rent for the period November 1 – 16, 2008 during which the Tenant had her belongings in the room in the upper suite. In particular, I find that due to the Landlord breaching the agreement, the Tenant had to find alternate storage and this was a reasonable period of time for her to do so. Consequently, I find that the Landlord is not entitled to a loss of rent for November and December, 2008 and that part of his claim is dismissed.

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I also find that there is insufficient evidence to support the Landlord's claim for damages to the rental unit. In particular, there is no move in or move out condition inspection report to confirm the condition of the room in the upper suite at the beginning of the tenancy or after the Tenant moved out her belongings. The Tenant provided photographs that show no damage to the unit. Furthermore, there were other occupants in the rental property, 2 of whom had just moved in who could have been responsible for the damages to the common areas. I also note that the damage estimate provided by the Landlord is dated February 25, 2009 and refers to "water damage" as the reason for the estimate. For all of these reasons, the Landlord's claim for damages to the rental unit is dismissed.

Section 38 of the Act says that a Landlord must within 15 days of (the later) of the end of the tenancy or the date he receives the Tenant's forwarding address in writing either return the security deposit or apply for dispute resolution. If a Landlord fails to do either of these things and does not have the Tenant's written authorization to keep the security deposit, then pursuant to s. 38(6) of the Act, the Landlord must pay the Tenant double the amount of the security deposit.

Although the Tenant provided evidence that she sent her forwarding address in writing by registered mail to the Landlord on December 16, 2008, there is no information on the Canada Post online tracking system as to whether the Landlord received notification of the mail or received the mail. In the absence of any other evidence to show that the Landlord received the Tenant's forwarding address (or deemed receipt), I find that the Landlord is only liable to pay the Tenant the original amount of the security deposit plus accrued interest of \$1.23. As the Tenant has been successful in this matter, she is also entitled to recover her \$50.00 filing fee.

## Conclusion

The Landlord's application is dismissed. A monetary order in the amount of **\$376.23** has been issued to the Tenant and a copy of it must be served on the Landlord. If the amount is not paid by the Landlord, the Order may be filed in the Provincial (Small Claims) Court of British Columbia 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: May 12, 2009.

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Dispute Resolution Officer