



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing and Social Development

## **DECISION**

### Dispute Codes:

MNDC, MNSD

### Introduction

This hearing was scheduled in response to the tenant's Application for Dispute Resolution, in which the tenant has made application for a monetary Order for return of the security deposit and for damages or loss.

The tenant provided affirmed testimony that copies of the Application for Dispute Resolution and Notice of Hearing were sent on December 4, 2009 to the landlord via registered mail at the address noted on the Application. A Canada Post tracking number and receipt was provided as evidence of service to the landlord's residential address. The tenant testified that the landlord's residence was behind her rental unit and that she used that residential address for service of the Notice and her evidence, which was also sent via registered mail.

The tenant stated that all registered mail has been returned, marked by Canada Post as refused by the landlord.

These documents are deemed to have been served in accordance with section 89 of the Act; however the landlord did not appear at the hearing.

### Preliminary Matter

At the start of the hearing the Application was amended to reflect the correct amount of the tenant's monetary claim.

### Issue(s) to be Decided

Is the tenant entitled to return of double the deposit paid?

Is the tenant entitled to compensation for damage or loss?

### Background and Evidence

The tenancy commenced in late November 2008. The tenant provided copies of notes signed by the landlord indicating a \$300.00 rent payment made on November 26, 2008 and a \$100.00 rent payment made on November 28, 2008. Rent was \$600.00 per month; however a notation on one of the documents signed by the landlord indicates "\$700 per." The landlord lived in a home next to the rental unit. Prior to renting the unit the tenant did not know the landlord. The tenant stayed in the rental unit for approximately 10 days before vacating and eventually receiving assistance from the police to remove a few of her belongings.

The tenant submitted written evidence which provided an account of her experience at the rental unit. The evidence included a note written on December 8, 2008, which indicates that the tenant expected to be able to enter the property on December 13, 2008, in order to retrieve her belongings. The evidence indicates that it took 3 weeks to receive assistance so that the tenant's belongings could be retrieved with assistance from the police.

The tenant has claimed compensation for the following:

Towing costs	60.00
32 cans stew	54.00
1 chainsaw repair	70.00
Hedge trimmer repair	40.00
Blower repair	20.00
1 can gas	11.00
1 pair long johns	33.00
3 pair underwear	33.00
2 towels	30.00
3 t-shirts	60.00
Cost to paint side of motor home	200.00
Replace license plates	18.00
Double deposit paid	600.00
Return of rent paid	400.00
Heating fuel	255.00
	1,938.00

The tenant provided a copy of a receipt signed by the landlord dated November 17, 2008, for payment of a \$300.00 deposit. On November 30, 2009 the tenant sent the landlord a letter via registered mail to the landlord's residential address, requesting return of her deposit paid, return of money spent on heating fuel and of the \$400.00 rent payment made. The letter provided the landlord with the tenant's forwarding address.

The tenant provided a Canada Post tracking number as evidence of service. This mail was refused by the landlord and returned to the tenant.

Within the first two days of the tenancy the landlord shut off the power and water services. After two days the services were turned back on for several hours. The tenant stated that the landlord told her that he thought she was out and did not require the services. The tenant made requests to have the services turned back on. When the tenant was provided water it was black and unusable.

The rental unit lock was removed at the start of the tenancy and within the first few days of the tenancy the landlord began entering the tenant's home uninvited. The first time the tenant found the landlord in her home was at 4 a.m.; she awoke to find the landlord drinking coffee and helping himself to her food.

The tenant told the landlord to leave, yet several days later he again came into her home in the early hours of the morning and he was again told to leave. The tenant testified that the landlord then started to enter her home during the day. The tenant estimated that the landlord entered her home 8 to 9 times each day and that he was becoming rude, and making inappropriate comments. The tenant began to use a stick to jam the door closed at night.

The tenant became nervous and parked her vehicle on the road as she thought she might need to leave the property quickly. The landlord then barricaded the driveway so that the tenant could not access the home with her vehicle.

Due to the on-going loss of quiet enjoyment and feeling that her personal safety was threatened the tenant left the rental unit and in early December 2008, the police escorted the tenant to and from the rental unit, so that she could retrieve some belongings. The tenant left her motor home, filled with possessions and some belongings outside, against the motor home. The tenant attempted to obtain assistance from the police so that she could again return to retrieve the balance of her belongings. The tenant was unclear as to the date she finally removed her belongings from the rental unit, but her written evidence indicates it was at the end of December 2008. At that time the police were able to go to the property so that a tow truck hired by the tenant could remove her motor home and belongings. The tenant was discouraged by the police to accompany them to the property.

The missing items claimed by the tenant are those the tenant claims were taken from her home during the approximately the first ten days of the tenancy. The tenant believes the only person who could have taken the items would be the landlord. In relation to the spray painted motor home, the tenant provided photographs which show white spray paint on the vehicle. The tenant found the spray can in front of her door and when she asked the landlord about it he admitted to having sprayed the vehicle.

The tenant believes the landlord took her license plates from the motor home and that he tampered with her equipment, resulting in repair costs. The tenant was not able to

obtain any verification of her fuel payment made to Columbia Fuels. The tenant has claimed towing costs incurred as a result of having to remove her motor home from the property. The motor home was in working condition when the tenant vacated and she believes the landlord damaged the wiring, rendering the vehicle inoperable.

### Analysis

Section 38(1) of the Act determines that the landlord must, within 15 days after the later of the date the tenancy ends and the date the landlord received the tenant's forwarding address in writing, repay the deposit or make an application for dispute resolution claiming against the deposit. If the landlord does not make a claim against the deposit paid, section 38(6) of the Act determines that a landlord must pay the tenant double the amount of security deposit.

First, I must determine the date upon which the tenancy ended, as section 39 of the Act requires a tenant to provide the landlord with a written forwarding address within one year of the end of the tenancy.

In the absence of the landlord at this hearing and in the absence of any evidence disputing the tenant's submission, I find, based upon the tenant's testimony and the receipts submitted as evidence, that this tenancy commenced on November 26, 2008, when the first partial rent payment was made. If the monthly rent was \$700.00, the payment of \$400.00 rent would have paid the portion of rent owed for a thirteen day period; thus taking the tenancy to December 9, 2009. Therefore, I find that the tenancy commenced on November 26, 2008 and ended on December 9, 2009; by which time the tenant had vacated the rental unit.

I find that on December 5, 2009, five days after the registered mail was sent, the landlord was served with the tenant's written forwarding address and request for return of the deposit paid. I have no evidence before me that landlord has filed for dispute resolution claiming against the deposit or repaid the deposit within fifteen days, as requested in writing by the tenant. Therefore, in the absence of the landlord at this hearing, pursuant to section 38(6) of the Act, I find that the tenant did provide the landlord with her written forwarding address within one year of the end of the tenancy and that the tenant is entitled to return of double the \$300.00 deposit paid to the landlord.

When making a claim for damages under a tenancy agreement or the Act, the party making the allegations has the burden of proving their claim. Proving a claim in damages requires that it be established that the damage or loss occurred, that the damage or loss was a result of a breach of the tenancy agreement or Act, verification of the actual loss or damage claimed and proof that the party took all reasonable measures to mitigate their loss.

In relation to the items the tenant claims the landlord stole from her home; there is no evidence before me that the landlord did take these items. The tenant has the burden of proving that the landlord tampered with her motor home, equipment and stole her belongings and the license plates. The tenant may have strong suspicions that the landlord was responsible, however, the burden of proving those suspicions falls to the tenant. Therefore, based on the balance of probabilities and in the absence of evidence that the landlord is responsible, I dismiss the claim for the loss of items, repairs costs and towing fee. I also base this decision on the absence of verification of the towing fee claimed.

The tenant has provided affirmed testimony and photographic evidence that the landlord has spray painted her motor home. I find that the tenant's testimony that the landlord admitted to spray painting the motor home compelling. Therefore, in the absence of the landlord at this hearing, I find that the landlord is responsible for the damage to the motor home and, in the absence of a professional estimate of the cost for repair, that the tenant is entitled to nominal damages in the sum of \$75.00.

There is no evidence before me verifying the costs claimed for fuel; therefore, this portion of the claim is dismissed.

In relation to the tenant's claim for return of her rent paid, the tenant has claimed a total loss of quiet enjoyment of her rental unit throughout the short period of time that this tenancy lasted. The tenant awoke to find the landlord in her home, lost water and power services due to the actions of the landlord and as a result was unable to feel safe in her home. Every tenant is entitled to the right of quiet enjoyment, which means a right to personal privacy, freedom from unreasonable disturbance and exclusive possession of the rental unit.

I find, in the absence of the landlord at this hearing and based upon the testimony of the tenant, that the value of the tenant's rental accommodation was devalued to the point of rendering it of no value. I make this determination based upon the testimony that the landlord repeatedly entered the home, sometimes in the middle of the night, that he repeatedly entered the home during the day and severed the essential services of water and power to the rental unit. Therefore, I find, pursuant to sections 28 and 67 of the Act, that the tenant is entitled to compensation in the sum of \$400.00 for damages, equivalent to the payment of rent made to the landlord and that the value of the tenancy; to its end, was nil.

Therefore, I find that the tenant is entitled to the following compensation:

	Claimed	Accepted
30 cans dog food	54.00	0
32 cans stew	54.00	0
1 chainsaw repair	70.00	0

Hedge trimmer repair	40.00	0
Blower repair	20.00	0
1 can gas	11.00	0
1 pair long johns	33.00	0
3 pair underwear	33.00	0
2 towels	30.00	0
3 t-shirts	60.00	0
Cost to paint side of motor home	200.00	75.00
Replace license plates	18.00	0
Double deposit paid	600.00	600.00
Return of rent paid – loss of quiet enjoyment	400.00	400.00
Heating fuel	255.00	0
	1,938.00	1,075.00

### Conclusion

I find that the tenant has established a monetary claim, in the amount of \$1,075.00, which is comprised of damages and loss and double the deposit paid.

Based on these determinations I grant the tenant a monetary Order for \$1,075.00. In the event that the landlord does not comply with this Order, it may be served on the landlord, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

The balance of the tenant's claim is dismissed.

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 12, 2010.

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Dispute Resolution Officer