



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Public Safety and Solicitor General

## **DECISION**

Dispute Codes      MNDC, MNSD, FF

### Introduction

This hearing dealt with an application by the tenant for a monetary order for compensation due to damage or loss, return of the security deposit and recovery of the filing fee. The tenant participated in the conference call hearing but the landlord did not. The tenant presented evidence that the landlord was served with the application for dispute resolution and notice of hearing by registered mail. I found that the landlord had been properly served with notice of the tenant's claim and the date and time of the hearing and the hearing proceeded in their absence.

### Issue(s) to be Decided

Is the tenant entitled to any of the above under the Act.

### Background and Evidence

This tenancy began July 1, 2010 with monthly rent of \$600.00, the tenant paid a security deposit of \$300.00. There was no written tenancy agreement in place however the tenant paid her rent to landlord named in this application. In late July 2010 the tenant vacated the rental unit for 'fear of her safety' do to the actions of the landlord.

The tenant testified that while the landlord's family occupied the top floor of the residence, the landlord often slept in a spare room on the main floor that was connected to the tenant's rental unit. The tenant stated that there was an unlocked door between the spare room and her rental unit and that the landlord would get drunk and then come into her rental unit. The tenant spoke to the landlord's brother and requested a lock for the door however the lock provided was placed on the tenant's front door and not the door between the adjoining rooms. The tenant stated that one night in mid July 2010 the landlord entered her rental unit at 2:30 AM and started to come after her. The tenant stated that she had to run around her apartment in a frantic attempt to get away from

the landlord who was extremely intoxicated while calling 911 for assistance. The police did attend and a police report was filed.

The tenant stated that after this incident she was too scared to stay in her rental unit and immediately vacated. The tenant spent the month of August 2010 staying with various friends as she was too afraid to look for a new rental unit. The tenant was unemployed during July and August 2010 and this also impacted her ability to secure new accommodations.

On September 6, 2010 the tenant moved into a motel at the cost of \$250.00 per week and she resided at the motel until November 1, 2010. The tenant is requesting a monetary order for \$4837.08.

July rent	\$600.00
Security deposit	\$300.00
Moving expenses, in and out	\$287.08
Motel rent payments	\$2100.00
Compensation for furniture	\$850.00
Compensation for fear and anxiety	\$700.00
<b>Total Compensation</b>	<b>\$4837.08</b>

## Law

Residential Tenancy Policy Guideline **5. speaks to the “Duty to Minimize Loss,” and provides in part as follows:**

*The duty to minimize the loss generally begins when the person entitled to claim damages becomes aware that damages are occurring. Failure to take the appropriate steps to minimize the loss will affect a subsequent monetary claim arising from the landlord’s breach, where the tenant can substantiate such a claim.*

*The Legislation requires the party seeking damages to show that reasonable efforts were made to reduce or prevent the loss claimed. The arbitrator may require evidence such as receipts and estimates for repairs or advertising receipts to prove mitigation.*

Residential Tenancy Policy Guideline **6. Right to Quiet Enjoyment**

*This guideline deals with a tenant’s entitlement to quiet enjoyment of the property that is the subject of a tenancy agreement. At common law, the covenant of quiet enjoyment “promis(es) that the tenant . . . shall enjoy the possession and use of the premises in peace and without disturbance. In connection with the landlord-tenant relationship, the covenant of quiet enjoyment protects the tenant’s right to freedom from*

*serious interferences with his or her tenancy.”<sup>1</sup> A landlord does not have a reciprocal right to quiet enjoyment.*

*The Residential Tenancy Act and Manufactured Home Park Tenancy Act<sup>2</sup> (the Legislation) establish rights to quiet enjoyment, which include, but are not limited to:*

- reasonable privacy*
- freedom from unreasonable disturbance,*
- exclusive possession, subject to the landlord's right of entry under the Legislation, and*
- use of common areas for reasonable and lawful purposes, free from significant interference.*

**Basis for a finding of breach of quiet enjoyment** speaks to:

*Frequent and ongoing interference by the landlord, or, if preventable by the landlord and he stands idly by while others engage in such conduct, may form a basis for a claim of a breach of the covenant of quiet enjoyment. Such interference might include serious examples of: · entering the rental premises frequently, or without notice or permission;*

- unreasonable and ongoing noise;*
- persecution and intimidation;*
- refusing the tenant access to parts of the rental premises;*
- preventing the tenant from having guests without cause;*
- intentionally removing or restricting services, or failing to pay bills so that services are cut off;*
- forcing or coercing the tenant to sign an agreement which reduces the tenant's rights; or,*
- allowing the property to fall into disrepair so the tenant cannot safely continue to live there.*

### Analysis

Based on the documentary evidence and undisputed testimony of the tenant, I find on a balance of probabilities that the tenant has met the burden of proving that they have grounds for entitlement to a monetary order for compensation. The tenant did however have a duty to minimize her loss per *Residential Tenancy Policy Guideline 5* and the compensation awarded has been determined with this in mind.

As the tenant's peace and quiet enjoyment was significantly impacted through the length of her brief tenancy, the tenant is awarded the \$600.00 rent paid for July 2010, the \$300.00 security deposit paid and \$350.00 compensation for 'fear and anxiety'.

A receipt in the amount of \$42.75 has been provided for rental of a truck for the tenant's move in and this amount will be awarded to the tenant. There is insufficient evidence to

substantiate the balance of the moving costs therefore those monies will not be awarded to the tenant.

The tenant had more than one clear month to secure new living accommodations therefore the tenant will not be awarded the \$2100.00 paid for motel rental from September 6 through November 1, 2010.

As the tenant has not provided any evidence or receipts for the furniture that is claimed to have been given away, the tenant is not entitled to the \$850.00 compensation requested.

I find that the tenant has established a claim for \$1292.75 in compensation.

The tenant is entitled to recovery of the \$50.00 filing fee.

### Conclusion

I find that the tenant has established a monetary claim for **\$1342.75**. The tenant is also entitled to recovery of the \$50.00 filing fee.

A monetary order in the amount of **\$1342.75** 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: March 10, 2011.

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Residential Tenancy Branch