



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDC

### Introduction

This hearing dealt with an Application for Dispute Resolution by the Tenant for a monetary order for money owed or compensation for damage or loss under the Residential Tenancy Act (the "Act"), regulations or tenancy agreement.

The female Landlord did not appear at the hearing, although she submitted evidence for the application file. The Tenant testified that he served the Hearing Package upon the female Landlord via registered mail on June 2, 2011, to the address at which the Landlord carries on business.

Having been satisfied the Tenant served the female Landlord in a manner that complies with section 89 of the Residential Tenancy Act (the "Act"), I proceeded to hear from the Tenant without the female Landlord present.

The Tenant and the agent for the male Landlord appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in documentary form, and to make submissions to me.

### Issue(s) to be Decided

Have the Landlords breached the Act or tenancy agreement, entitling the Tenant to a monetary order for money owed or compensation for damage or loss?

### Background and Evidence

The Tenant testified that he arranged with the female Landlord to rent the rental unit, starting May 23, 2011. The Tenant further submitted that although the rental unit was in one town, the Landlord called him to meet at her residence, in another town, to make the final arrangements.

The Tenant stated that the Landlord assured him the rental unit was immediately available before he made travel plans.

The Tenant submitted that he attended the Landlord's residence and signed a tenancy agreement there, of which he never received a copy, on May 23, 2011. The female Landlord submitted a copy of the tenancy agreement.

The Tenant stated that he paid the Landlord \$1,125.00 in cash, with \$750.00 being the first month's rent and \$375.00 being for the security deposit. The Tenant stated he received a receipt.

The Tenant testified that the Landlord instructed him to go to the rental unit and wait for her husband, the male Landlord, to obtain a key to the rental unit. The Tenant testified that he waited for the male Landlord for hours, but that the male Landlord never arrived.

The Tenant stated he called the police due to his suspicions that he was the victim of a scam, but the police did nothing. The Tenant decided to return to his originating city that night to spend the night and that the Landlord called him repeatedly on his way to ask him to return to her residence to have intercourse and to buy him things.

The Tenant refused and was told to return to the rental unit the next day to wait for the male Landlord for the keys. The Tenant returned to the rental unit; however, the male Landlord never came to the rental unit and the Tenant never received access or a key to the rental unit, according to the Tenant.

The Tenant's claim is the amount of \$1,125.00, which is a return of his first month's rent and the security deposit.

In response, the male Landlord's agent, stated that as a long time friend of the male Landlord, he knows the female Landlord quite well and believed the Tenant's testimony.

The agent stated that the female Landlord is mentally unstable and classified her as a "liar."

The agent testified that the male Landlord is a co-owner of the rental unit, but that the Landlords have been separated for a long time and that the male Landlord had no knowledge of the rental arrangement or this transaction.

### Analysis

Based on the above testimony and evidence, and on a balance of probabilities, I find as follows:

Only the evidence and testimony relevant to the issues and findings in this matter are described in this Decision.

In the absence of the female Landlord, who did not appear, and by concurrence of the Tenant's testimony by the male Landlord's agent, the Tenant's testimony will be the preferred evidence.

When making a claim for damages under a tenancy agreement or the *Act*, the party making the allegations, the tenants in this case, have 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.

I allow the Tenant's application and grant him a **monetary order** in the amount of **\$1,125.00**.

In reaching this conclusion, I was persuaded by the Tenant's testimony that he paid the first month's rent and a security deposit, but was never able to move into the rental unit. I find that the Landlord's failure to provide a key or any access to the rental unit violates several sections of the Residential Tenancy Act (the "Act"), predominantly section 28 (c), dealing with the Tenant's right to quiet enjoyment and exclusive possession of the rental unit, and section 30, unreasonably restricting the Tenant's right of access to the rental unit.

I also find that the Landlord illegally ended this tenancy without notice and I find that this tenancy has ended due to the tenancy agreement being frustrated, pursuant to section 44 (e) of the Act.

As I find the tenancy agreement frustrated and as I find the Tenant never gained access to the rental unit, I find the Tenant is entitled to a rent abatement for the full amount of the monthly rent he paid in advance, \$750.00, and a return of the security deposit in the amount of \$375.00.

### Conclusion

I am enclosing a monetary order for \$1,125.00 with the Tenant's Decision. This order is a **legally binding, final order**, and it may be filed in the Provincial Court of British Columbia (Small Claims) should the Landlords fail to comply with this monetary order.

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: September 06, 2011.

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Residential Tenancy Branch