



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDC and MNSD

### Introduction

This application was brought by the tenant seeking return of her security deposit and compensation for her belongings on the claim that the landlord disposed of them after evicting her without due process.

### Issue(s) to be Decided

This application requires a decision on whether the tenant is entitled to a monetary award for return of her security deposit and losses arising from an unlawful eviction.

### Background and Evidence

This tenancy was set to begin on September 3, 2011 and ended on September 7, 2011 or September 8, 2011. Rent was to be \$750 per month and the landlord holds a security deposit of \$375.

The landlord stated that he did not believe he had a tenancy agreement with the tenant. He stated that, in anticipation of one, he had given the tenant a receipt so she might approach Income Assistance for rent money. He stated that she subsequently paid him \$700 in prorated rent as the tenancy was starting late in addition to a \$375 security deposit.

The landlord said that when the tenant paid him the rent and security deposit, he presented her with a rental agreement which she refused to sign. On her refusal, he similarly refused to provide her with the keys to the rental unit. According to the landlord, the tenant stormed off uttering profanities.

The landlord gave evidence, and the tenant concurred, that the tenant had returned to the rental unit with her brother who kicked in the entry door and she stated she moved in.

During the hearing, the parties both gave evidence that the police had attended the rental unit on that and every night of this brief tenancy.

The landlord stated he was exploring his legal options when he received further complaints from other residents of the strata building including reports of persons climbing in and out of the back window, trying to climb into another unit, numerous persons spilling out of the unit and causing other occupants to fear for their safety.

The landlord stated that he returned to the rental unit on September 7, 2011 and told the tenant that if she did not leave immediately, he would take legal action. He stated that she left voluntarily and said she would be back for her belongings.

The tenant gave evidence that the landlord had appeared in an agitated state, ordered her to get out, threatened to punch her and to set his dog on her two children. She stated that she left and told the landlord she would be back for her belongings. According to the tenant, the landlord forbade her to return to the rental unit.

The landlord stated that when he returned to the rental unit some hours later, the tenant's belongings were gone.

The tenant's application seeks \$4,165 in compensation for her property. The tenant didn't explain the connection, but two other parties – one apparently her sister - stated that their belongings valued at \$1,875 were in the rental unit..

### Analysis

I have some question as to the veracity of both parties. The tenant expressed no regrets about accessing the rental unit by kicking in the door nor of her rental unit being the subject of police attendance four occasions in as many nights.

I find it equally difficult to accept the contents of the rental unit disappeared without any disinterested third party having observed someone removing them from the rental unit and testifying to that fact, particularly given that neighbours had previously been observant enough to call the police multiple times.

What is apparent is that the landlord did not recognize that a tenancy existed. I must find that a tenancy was created when the landlord accepted a rent payment and a security deposit and returned neither when he declined to give the tenant the keys.

Clearly, there were very unusual circumstances at play, but I find the landlord erred when he chose to bypass due process and take matters into his own hands.

Section 44 of the Act sets out how tenancies may end in British Columbia and provides:

(1) A tenancy ends only if one or more of the following applies:

(a) the tenant or landlord gives notice to end the tenancy in accordance with one of the following:

(i) section 45 [*tenant's notice*];

(ii) section 46 [*landlord's notice: non-payment of rent*];

(iii) section 47 [*landlord's notice: cause*];

(iv) section 48 [*landlord's notice: end of employment*];

(v) section 49 [*landlord's notice: landlord's use of property*];

(vi) section 49.1 [*landlord's notice: tenant ceases to qualify*];

(vii) section 50 [*tenant may end tenancy early*];

(b) the tenancy agreement is a fixed term tenancy agreement that provides that the tenant will vacate the rental unit on the date specified as the end of the tenancy;

(c) the landlord and tenant agree in writing to end the tenancy;

(d) the tenant vacates or abandons the rental unit;

(e) the tenancy agreement is frustrated;

(f) the director orders that the tenancy is ended.

Under the circumstances submitted, the landlord was in a position apply for an Order of Possession under section 56 of the *Act* which provides an expedited mechanism to end a tenancy early in circumstances in which it would be unreasonable for a landlord to await an application under section 47 of the *Act* for cause.

Taking into account that the conduct of the tenant contributed in large to this dispute, and taking into account the abrupt end to the tenancy, I find that the landlord must return the rent for the 25 days of September for which the tenant paid but did not occupy the rent unit, a per diem equalling \$625 plus the \$375 security deposit. As I have no evidence of the tenant having provided the landlord with a forwarding address, I cannot order the deposit returned in double under section 38(1) and (6) of the *Act*.

Given the questionable conduct of the tenant and a lack of reliable third party evidence in support of the tenant's claim for return of property, I find that I cannot make a determination on the tenant's personal property and that part of the claim is dismissed.

### Conclusion

The tenant's copy of this decision is accompanied by a Monetary Order for \$1,000 consisting of \$625 of the unused portion of rent paid and the \$375 security deposit.

The landlord remains at liberty to make application for the damages to the rental unit.

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: November 28, 2011.

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Residential Tenancy Branch