



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNSD, MNDC and FF

### Introduction

This application initiating this hearing was brought by the tenant on November 2, 2011 seeking a Monetary Order for damage and losses on the claim that the landlord breached the rental agreement and legislation. The tenant also seeks a monetary award for return of a portion of the security deposit that was retained by the landlord without consent and without the landlord having made application to claim on it.

Despite having been served with the Notice of Hearing sent by registered mail on November 7, 2011, the landlord did not call in to the number provided to enable his participation in the telephone conference call hearing. Therefore, it proceeded in his absence.

### Issues to be Decided

This application requires a decision on whether the tenant is entitled to a monetary award for damage and losses claimed and for return of the contested portion of the security deposit and whether that amount should be doubled.

### Background and Evidence

This tenancy ran from August 3, 2008 to September 1, 2011 at a monthly rent of \$575. The tenant was uncertain as to the exact amounts distinguishing her security deposit from her pet damage deposit but submitted a copy of her bank statement for July of 2008 which shows a transfer of funds of \$936.50 which she swears was a payment to the landlord for the first month's rent and the deposits. The remaining \$361.50 was the combined value of the deposits.

The tenant stated that she had received return of \$257.50, but the landlord did not respond to her email request for an accounting of the balance.

During the hearing, the tenant stated that her family was forced to vacate the rental unit after an inspector from the gas company told her in August of 2011, the very old furnace was dangerous. The inspection report submitted into evidence stated that the furnace "must be replaced or serviced."

The tenant stated that when she informed the landlord, he promised to replace the furnace if she would continue the tenancy. However, the tenant also submitted a report from a private furnace repair company from September 3, 2008 citing numerous defects in the furnace and noting, "Furnace estimated to be around 40 years old, needs to be replaced."

The tenant stated that the landlord had reimbursed her by deducting the \$73.50 for that call from her rent. The tenant stated that she had implored the landlord, who resides some distance from the rental unit, by numerous emails to upgrade the furnace throughout the tenancy but he had made no effort to do so.

When increasing noise in the furnace led to her call the gas company inspector in August and given his dire warning about its condition, she felt she could not rely on the landlord's promise and left the tenancy.

In the present application, the tenant makes claim and I find as follows:

**Emotional stress & upheaval - Unspecified.** Section 28 of the *Act* provides for a tenant's right to quiet enjoyment of the rental unit. I find that the tenant's increasing fear of fire resulting from the landlord's inaction on repair or replacement of the furnace constitutes a clear infringement on the tenant's right to quiet enjoyment. I accept the evidence of the tenant that she was unable to move earlier or to invoke the emergency repair provisions of section 38 of the *Act* because of economic circumstances.

I award the tenant \$1,000 on this claim in view of the potentially tragic consequences of the landlords failure to maintain the rental unit as required under section 32 of the *Act* in a state of decoration and repair that:

- (a) complies with the health, safety and housing standards required by law, and
- (b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

**Moving expenses - \$113.85.** This claim specified truck rental only. However, the tenant reported that the move took three persons working for five hours to complete. I find that the tenant is entitled to recover the cost of the moving truck and \$15 for each of the 15 person hours of labour to complete the move, a total of  $\$113.85 + (\$15 \times 15 \text{ hours} = \$225) = \$338.85$ .

**First month's rent at new rental unit - \$825.** I find that the tenant would have had to paid rent for October 2011 irrespective of the circumstances of the present tenancy. This claim is dismissed.

**Loss of use of the garage - \$1,350.** The tenant states that she had been promised use of the garage for storage, but that the landlord had not cleaned it out for her. The tenant claims \$75 per month for 18 months.

In the absence of a written rental agreement, I find that the tenant has failed to meet the burden of proof that she was entitled to exclusive use of the garage. This claim is dismissed.

**Return of balance of the pet deposit - \$103.75.** This claims is based on the difference between the \$361.50 the tenant claims to have paid in deposit and the \$257.50, including interest, returned by the landlord.

Section 38(1) of the *Act* allows a landlord 15 days from the latter of the end of the tenancy or receipt of the tenant's forwarding address to return a security deposit or file for dispute resolution to make claim against it unless the tenant has agreed otherwise.

Section 38(6) of the *Act* states that, if a landlord does not comply with section 38(1) of the *Act*, the landlord must pay the tenant double the amount of the deposit(s). In the present matter, I find that the landlord did retain \$103. 75 of the deposits without authorization and must return that amount in double which is \$207.50.

Thus, I find that the tenant is entitled to a Monetary Order calculated as follows:

Loss of quiet enjoyment	\$1,000.00
Balance of security deposit withheld without consent (\$103.75 x 2)	207.50.
<b>TOTAL</b>	<b>\$1,546.35</b>

### Conclusion

The tenant's copy of this decision is accompanied by a Monetary Order for **\$1,546.35**, enforceable through the Provincial Court of British Columbia, for service on the landlord.

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: January 20, 2012.

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Residential Tenancy Branch