



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDC, MNSD, OLC, RPP, FF  
MNR, FF

### Introduction

This hearing dealt with cross applications by the landlord and tenant. The application by the tenant is for return of the security deposit, money owed or compensation due to damage or loss, for the landlord to comply with the Act, return of the tenant's personal property and recovery of the filing fee. The landlord's application is for a monetary order for unpaid rent and recovery of the filing fee. Both parties participated in the conference call hearing.

### Issue(s) to be Decided

Is either party entitled to any of the above under the Act.

### Background and Evidence

This tenancy began December 1, 2008 with monthly rent of \$650.00 and the tenant paid a security deposit of \$325.00.

The tenant testified that she gave the landlord notice to vacate on December 7, 2011 and moved most of her personal items out of the rental unit on December 10, 2011. The tenant stated that when she went back to the rental unit on December 12, 2011 she discovered that the landlord had changed the locks, cleaned the rental unit and removed the remainder of her personal belongings. When the tenant contacted the landlord they advised the tenant that everything had been removed and they had already cleaned and were in the process of repairing and repainting the rental unit. The landlord then made arrangements to return what possessions of the tenant's they had to the tenant.

The tenant stated that she had left food in the fridge and freezer, family heirlooms IE; picture frame, ice bucket, crystal decanter, dishes, table cloth and books were missing, 3 blouses were missing and her cat warming bowls. The tenant stated that she had also left cleaning supplies and a paint roller in the rental unit. The tenant stated that she has

not been able to provide a receipt to the landlord for the dry-cleaning as she needs to be compensated first due to limited funds.

The landlord testified that the fridge and cupboards were completely bare and that they do not recall seeing any of the other items that the tenant claims are still missing. The landlord stated that they did return everything that was left in the rental unit to the tenant.

The tenant is seeking return of or compensation for the following:

<b>Tenants Claim</b>		<b>Landlord's Action/Response</b>
3 boxes	\$30.00	Picked up by tenant
Cleaning supplies	\$15.00	None found by landlord
Dryclean drapes & sheers	\$25.00	Agreed if receipts provided
2 brooms & dust pan	\$15.00	Returned to tenants agent
Bags for daughter	\$500.00	Contents unknown
2 sets kitchen curtains	\$40.00	Returned to tenants agent
5 hook robe holder	\$10.00	Returned to tenants agent
Contents of fridge/freezer	\$50.00	Both entirely empty
Security deposit	\$325.00	Landlord accepts possession of
20 days rent @ \$20.97 per day	\$419.40	Tenant locked out

The landlord testified that the tenant gave 30 days notice to vacate on December 7, 2011 but gave an end of tenancy date of December 31, 2011. The landlord stated that they had no way to contact the tenant and the tenant had not left her key when she vacated. The landlord stated that when they checked the rental unit all of the tenant's items had been removed and the landlord considered the tenant to have abandoned the rental unit and that was why they took possession and changed the locks.

The tenant countered the landlord's claim that they had no way to contact her as she has had the same cell phone number for many years. The landlord responded by stating that they did not phone the tenant as they thought the number was a land line that had been disconnected.

The landlord stated that as the tenant did not give proper notice they are entitled to rent for January 2012 in the amount of \$650.00. The landlord stated that the repairs to the rental unit were completed by the end of December 2011 and that they hired an agency to advertise the rental unit. The landlord stated that the rental unit was advertised available for rent as of January 15, 2012.

The landlord accepted that the \$325.00 security deposit was transferred to them in the sale of the property.

### Analysis

Based on the documentary evidence and testimony of the parties, 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 money owed or compensation due to damage or loss and return of the security deposit.

The landlord acted in haste when they considered the rental unit to have been abandoned by the tenant as the tenant still had belongings in the rental unit and had paid the December 2011 rent in full. Therefore I find that the tenant is entitled to a \$419.40 reimbursement for the rent paid when she was locked out of the rental unit. The tenant is also entitled to return of the \$325.00 security deposit and \$.81 in interest as the landlord has not made a claim against the security deposit in accordance with the Act.

In regards to the tenant's claim for compensation for items removed by the landlord, with the exception of the bag of personal belongings, the cleaning supplies and food in the fridge/freezer, the landlord has returned all of the items listed by the tenant. Therefore in relation to the tenant's claim for compensation of disposed items I find, pursuant to section 62(2) of the Act, that in the absence of any verification of the costs claimed, that the claim for compensation for items removed by the landlord is dismissed without leave to reapply.

<b>Tenants Claim</b>		<b>Landlord's Action/Response</b>
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2 brooms & dust pan	\$15.00	Returned to tenants agent
Bags for daughter	\$500.00	<i>Items not found by landlord</i>
2 sets kitchen curtains	\$40.00	Returned to tenants agent
5 hook robe holder	\$10.00	Returned to tenants agent
Contents of fridge/freezer	\$50.00	<i>Landlord claims empty</i>
Security deposit	\$325.00	Landlord accepts possession of
20 days rent @ \$20.97 per day	\$419.40	<i>Tenant locked out</i>

Accordingly I find that the tenant is entitled to a monetary order for \$745.21.

As the tenant has been successful in their application the tenant is entitled to recovery of the \$50.00 filing fee.

Based on the documentary evidence and testimony of the parties, I find on a balance of probabilities that the landlord has not met the burden of proving that they have grounds for entitlement to a monetary order for unpaid rent.

The landlord took possession of the rental unit to complete repairs which were finished by the end of December 2011 however the landlord did not advertise the rental unit for January 1, 2012 and in fact advertised the unit as available for January 15, 2012.

Therefore I find that the landlord did not take sufficient steps to mitigate any loss of rent for January 2012. Therefore the landlord's application is dismissed without leave to reapply.

As the landlord has not been successful in their application the landlord is not entitled to recovery of the \$50.00 filing fee.

### Conclusion

I find that the tenant has established a monetary claim for \$745.21 in return of the security deposit and reimbursement of rent. The tenant is also entitled to recovery of the \$50.00 filing fee. I grant the tenant a monetary order under section 67 for the amount of **\$795.21**.

If the amount is not paid by the landlord(s), 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 8, 2012

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Residential Tenancy Branch