



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes: MNDC, MNSD, FF / MNDC, MNSD, FF

### Introduction

This hearing concerns 2 applications: i) by the landlord for a monetary order as compensation for damage or loss under the Act, Regulation or tenancy agreement / retention of the security deposit / and recovery of the filing fee; ii) by the tenant for a monetary order as compensation for damage or loss under the Act, Regulation or tenancy agreement / the double return of the security deposit / and recovery of the filing fee. The tenant participated in the hearing and gave affirmed testimony.

Despite scheduling of the hearing in response to applications by both parties, the landlord did not appear. The tenant confirmed that she received the landlord's application for dispute resolution and notice of hearing (the "hearing package"). However, the tenant testified that she received no other documentation from the landlord. I note that no documentation further the application for dispute resolution was submitted to the Branch by the landlord.

The tenant testified that she served the landlord with her own hearing package by way of registered mail. Evidence provided by the tenant includes the Canada Post tracking number for the registered mail.

The tenant further testified that her additional documentary evidence was personally served on the landlord on August 8, 2012.

### Issue(s) to be Decided

Whether either party is entitled to any of the above under the Act, Regulation or tenancy agreement.

### Background and Evidence

Pursuant to a written tenancy agreement, the 6 month fixed term of tenancy was from February 1 to August 1, 2012. Monthly rent of \$900.00 was due and payable in

advance on the first day of each month, and a security deposit of \$450.00 was collected. A move-in condition inspection report was not completed.

By e-mail dated May 22, 2012, the tenant gave notice to the landlord of her intent to vacate the unit by “tonight / tomorrow.” While rent had been paid up to May 31, 2012, the tenant had vacated and removed all of her possessions from the unit on May 22, 2012. A move-out condition inspection report was not completed.

Events giving rise to the tenant’s decision to vacate the unit include 4 separate occasions of flooding in the unit as follows: April 25 & 27, and May 14 & 21, 2012. The tenant testified that flooding was determined to be the result of a failure on the part of the landlord to have the septic tank pumped out in a timely manner. Further, the tenant testified that the landlord was apparently of the understanding that the unit was connected to the sewer system. A significant aspect of the tenant’s application concerns recovery of costs associated with replacing certain possessions damaged / discarded as a result of flooding.

The tenant’s decision to vacate the unit was also influenced by a felt threat to her personal safety, arising from the conduct of the landlord’s boyfriend who lived with the landlord, and the related involvement of police.

In writing by date of June 1, 2012, the tenant requested the return of her security deposit and provided the landlord with her forwarding address. The tenant testified that while she dated the letter June 1, 2012, she personally delivered it to the landlord’s mailbox on May 27, 2012. The tenant testified that the landlord subsequently used the address she provided in order to serve the tenant with her hearing package. To date, the security deposit has not been returned, and the landlord’s application to retain the tenant’s security deposit was filed on June 20, 2012.

The tenant began a new tenancy effective July 1, 2012. Between the period beginning May 22, 2012 when she vacated the unit and the start of her new tenancy, the tenant paid for storage of many possessions, and stayed variously with family and friends.

### Analysis

The full text of the Act, Regulation, Residential Tenancy Policy Guidelines, Fact Sheets, forms and more can be accessed via the website: [www.rto.gov.bc.ca](http://www.rto.gov.bc.ca)

Based on the documentary evidence which includes but is not limited to photographs and receipts, and the affirmed / undisputed testimony of the tenant, the various aspects of the respective applications and my findings around each are set out below.

### LANDLORD

In the absence of any appearance by the landlord at the hearing which was scheduled in response to applications by both parties, the landlord's application is hereby dismissed.

### TENANT

\$150.00: replacement of area rug. The tenant testified that this was purchased very shortly before the start of tenancy. While a picture of the rug was submitted in evidence, the tenant testified that she no longer has the receipt. The tenant testified that she discarded the rug after it sustained repeated damage from flooding with sewage water. I find on a balance of probabilities that the tenant has established entitlement limited to **\$125.00\***.

\$50.00: replacement of used book shelf. For reasons similar to those set out immediately above, I find on a balance of probabilities that the tenant has established entitlement limited to **\$40.00\***.

\$30.00: yoga mat. For reasons similar to those set out above, I find on a balance of probabilities that the tenant has established entitlement limited to **\$15.00\***.

\$90.00: yoga bolster. For reasons similar to those set out above, I find on a balance of probabilities that the tenant has established entitlement limited to **\$45.00\***, which is half of the amount claimed.

\$150.00\*: towels & bathmats. For reasons similar to those set out above, I find that the tenant has established entitlement to the full amount claimed.

\$42.00\*: laundromat. The tenant testified that she was instructed not to use the water following an assessment of the septic tank. Further, the dryer in the unit broke down for a period of time and at some stage hydro was cut off as a result of unpaid bills. Accordingly, the tenant testified that she was required to do laundry at the laundromat. In the result, I find that the tenant has established entitlement to the full amount claimed.

\$30.00: bathroom scale. The tenant testified that the bathroom scale had been purchased only 3 months before the start of tenancy, but had to be discarded following

repeated damage from flooding. I find on a balance of probabilities that the tenant has established entitlement limited to **\$25.00\***.

**\$20.00\***: *toilet paper & swifter pads*. The tenant testified that these items sustained damage from flooding and had to be discarded. I find on a balance of probabilities that the tenant has established entitlement to the full amount claimed.

**\$394.51**: *space heater*. The tenant testified that while heat was to be included in the rent, access to control of the heat was limited to the landlord's upstairs residence, and the landlord was reluctant to provide sufficient heat. The heat was also necessary to assist in drying the unit following flooding. The tenant testified that she still has possession of the heater. I find that the tenant has established entitlement limited to **\$197.26\***, which is half the amount claimed.

**\$34.99**: *space heater*. For reasons identical to those set out immediately above, I find that the tenant has established entitlement limited to **\$17.50\***, which is half the amount claimed.

**\$270.00**: *reimbursement of rent for the 9 day period May 23 – 31, 2012*. Section 28 of the Act speaks to **Protection of tenant's right to quiet enjoyment**. Further, *Residential Tenancy Policy Guideline # 6* addresses "Right to Quiet Enjoyment." I find on a balance of probabilities that the landlord failed to remedy the circumstances giving rise to repeated flooding in a timely manner, and that as a result, the tenant suffered a breach of her right to quiet enjoyment. This, in combination with events leading to a police presence at the unit, gave rise to the tenant's early end to tenancy. In summary, I find that the tenant has established entitlement to recovery of rent for the 9 day period in question, as above, in the limited amount of **\$261.27\***, which is calculated as follows:

$$\$900.00(\text{monthly rent}) \div 31 (\text{\# days in May}) = \$29.03 (\text{daily rent})$$

$$\$29.03 \times 9 (\text{\# days at issue}) = \$261.27 (\text{tenant's entitlement})$$

**\$296.36\***: *storage costs*. In view of all the circumstances set out above, I find that the tenant has established entitlement to the full amount claimed.

**\$113.90\***: *rental vehicle for moving*. In consideration of all the circumstances set out above, I find that the tenant has established entitlement to the full amount claimed.

**\$360.00**: *3 days of missed work related to packing / moving / preparation for hearing / stress & anxiety*. In the absence of sufficient evidence to support all aspects of this particular portion of the application, I find that the tenant has established entitlement limited to **\$100.00\***, which I find arises principally out of a breach of the right to quiet enjoyment.

**\$900.00\***: *double return of security deposit (2 x \$450.00)*. Section 38 of the Act addresses **Return of security deposit and pet damage deposit**. In part, this section

provides that within 15 days of the later of the date the tenancy ends, and the date the landlord receives the tenant's forwarding address in writing, the landlord must either repay the security deposit or file an application for dispute resolution. If the landlord does neither, section 38(6) of the Act provides that the landlord may not make a claim against the security deposit and must pay the tenant double the amount of the original security deposit. I find that as the landlord has neither repaid the security deposit, nor filed an application for dispute resolution within 15 days of being informed by the tenant in writing of her forwarding address, the tenant has established entitlement to the full amount claimed.

**\$12.10: photo prints.** Section 72 of the Act addresses **Director's orders: fees and monetary orders**. With the exception of the filing fee for an application for dispute resolution, the Act does not provide for the award of costs associated with litigation to either party to a dispute. Accordingly, this aspect of the claim is hereby dismissed.

**\$10.26: registered mailing costs.** For reasons identical to those set out immediately above, this aspect of the application is hereby dismissed.

**\$50.00\*: filing fee.** As the tenant has achieved a significant measure of success with her application, I find that she has established entitlement to the full amount claimed.

### Conclusion

Pursuant to section 67 of the Act, I hereby issue a **monetary order** in favour of the tenant in the amount of **\$2,398.29**. Should it be necessary, this order may be served on the landlord, filed in the Small Claims Court 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: August 14, 2012.

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Residential Tenancy Branch