



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNSD O MNDC

### Preliminary Issues

At the outset of the hearing the Landlord requested an adjournment because he was planning on going to the RCMP to file a complaint about information provided in the Tenant's evidence which he considered fraudulent. After careful consideration of the Landlord's request I explained that the Landlord was at liberty to seek remedy through the RCMP however I would not be granting his request for adjournment and we would be proceeding with the scheduled hearing, in accordance with # 6.6 of the *Residential Tenancy Branch Rules of Procedure*.

After reviewing the Tenant's application for dispute resolution, at the outset of the hearing, the Tenant confirmed she had selected "other" on her application to indicate her request for a monetary order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement relating to her request for return of her April 2012 rent and issues surrounding the Landlord's behaviour.

The Tenant had indicated these requests on her application for dispute resolution in the details of the dispute section. Therefore, the Landlord was made aware of the Tenant's request in the initial application and would not be prejudiced by the Tenant's request to amend the application. Based on the aforementioned I amend the application to include the request for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, in accordance with section 64(3)(c) of the Act.

### Introduction

This hearing dealt with an Application for Dispute Resolution by the Tenant to obtain a Monetary Order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, for other reasons, and the return of their security deposit.

The parties appeared at the teleconference hearing, acknowledged receipt of evidence submitted by the Tenant and gave affirmed testimony. At the outset of the hearing I explained how the hearing would proceed and the expectations for conduct during the

hearing, in accordance with the Rules of Procedure. Each party was provided an opportunity to ask questions about the process however each declined and acknowledged that they understood how the conference would proceed.

During the hearing each party was given the opportunity to provide their evidence orally and respond to each other's testimony. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

### Issue(s) to be Decided

1. Is the Tenant entitled to a Monetary Order?

### Background and Evidence

The Landlord affirmed that he rented the entire house and had permission to act as the owner's agent to rent out rooms for single room occupancy. The owner of the property, D.R. was added into the teleconference and he confirmed that he was owner of the property and that J.C. had authority to act as his agent when renting out rooms as a Landlord.

The Landlord and Tenant agreed that they entered into a month to month tenancy agreement that began on February 1, 2012. Rent was payable on the first of each month in the amount of \$500.00 and on February 1, 2012 the Tenant paid \$250.00 as the security deposit on March 25, 2012, in cash. No receipt was given to the Tenant for the cash payment. No move in or move out condition inspection report forms were completed.

The Tenant relied on her documentary evidence during her testimony which included, among other things, copies of: a monetary order worksheet, written statements from two witnesses, a reproduced receipt for paint, her cancelled cheque for April 2012 rent, the tenancy agreement, copies of e-mails between the Landlord and Tenant, a chronological list of events, her invoice for cleaning services, and her notice to end tenancy that was dated March 1, 2012.

The Tenant submitted that she was seeking to be reimbursed for \$42.08 for a can of paint she purchased and was not reimbursed for. She argued that the Landlord had agreed to provide all the paint and supplies and that he would prep the room and she would provide the labour. She acknowledged that she spilled 1/3 of the can of water based paint which she was able to clean up off the floor.

The Landlord confirmed he had entered into a verbal agreement for the Tenant to paint the room. He disputed the Tenant's testimony saying that he did provide her with two cans of paint and that she had to purchase another can because she spilled one of the cans he purchased.

The Tenant is seeking to recover all of her April 2012 rent in the amount of \$500.00. She alleged that the Landlord always acted inappropriately towards her making unwanted sexual advances and getting in her space. She stated that he would constantly attempt to rub up against her to the point where she felt very uncomfortable being in the same room with him. She advised that she gave her notice to end her tenancy and afterwards she began to leave really early in the morning and come back late at night to avoid the Landlord and his unwanted advances.

The Tenant submitted that when she attempted to come home the evening of April 5, 2012 she found that the Landlord locked her out. She noted how the Landlord had installed a chain lock on the inside of the front door shortly after she gave him her notice at the beginning of March 2012 and when she attempted to come home April 5<sup>th</sup> he had locked her out. She rang the bell several times and he finally let her in and he followed her to her room. She said that he was yelling and swearing at her as he followed her and that he continued to yell after she closed her bedroom door so she called the police. The police advised her that from then on she should only communicate with her Landlord in writing. She left the next morning and when she attempted to return on April 7<sup>th</sup> she was locked out again.

The Tenant stated that she felt she needed a witness attend the unit with her to prove she had been locked out so she made arrangements for her former professor to attend the unit with her on April 9, 2012. When they arrived she was locked out again. She said they went next door and asked the Landlord's mother to call him and tell him to let her in so she could pick up her possessions. She said the Landlord finally allowed her to enter. Then on April 20, 2012 she returned with her witness to pick up the rest of her possessions, clean the room, take photos, and return the keys to the Landlord.

The Landlord refuted the Tenant's testimony and argued that he did not install a chain lock on the door and that in fact the Tenant forgot her keys inside her room and was asking him to bring the keys to her at school. He submitted that he has never locked the Tenant out of the house, that there is not a chain lock on the door, and he claims the two witness statements provided by the Tenant are fraudulent.

The Landlord confirmed he did not submit evidence in response to the Tenant's claim and he continued to speak about how she had already put the end of her tenancy in motion when she provided him with her notice. He argued that it was the Tenant who began to display outrageous behaviours when he found her to be collecting kitchen articles inside one of the bedrooms.

The Tenant has sought the return of her \$250.00 security deposit. The Landlord confirmed receiving the Tenant's forwarding address first by text and / or e-mail on May 1, 2012 then again on May 15, 2012 by letter. He claims he mailed the Tenant a money order for \$150.00 and that he kept \$100.00 of the security deposit for damages she caused to her room.

The Tenant submitted that she never received a money order from the Landlord and stated that her photos confirm that she did not damage the room. Rather, she left the room in better condition than what it was at the beginning of her tenancy.

The Tenant stated that the last item she was seeking was for \$100.00 for services she provided to clean up after other tenants moved out. She argued the Landlord agreed to either pay her for her time for cleaning and moving their junk or he would provide her with computer work in exchange.

The Landlord submitted that he designed some graphics for the Tenant as payment for her cleaning services. He argued that he does not owe the Tenant any money for cleaning or moving services. He stated that the Tenant had already made the decision to move to another city and attend school so he does not believe he owes her anything.

In closing the parties confirmed their current mailing addresses and the hearing was concluded. The Landlord requested to add one more thing and stated that the Tenant was aware that the house was always locked at 10:00 p.m. and the interior safety chain was locked.

### Analysis

When a Tenant makes a claim for damage or loss the burden of proof lies with the Tenant to establish their claim. To prove a loss the applicant must satisfy the following four elements:

1. Proof that the damage or loss exists,
2. Proof that the damage or loss occurred due to the actions or neglect of the other party in violation of the Act, Regulation or tenancy agreement,

3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage, and
4. Proof that the applicant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

The evidence supports the parties agreed that the Tenant would paint her room, the Landlord would provide paint, and that the Tenant spilled some of the paint. The Landlord argued that the paint the Tenant purchased was to replace the spilled paint.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails. In this case, the Tenant has the burden to prove the Landlord failed to provide enough paint and she was forced to purchase more. The only evidence before me was disputed verbal testimony which I find to be insufficient to meet the Tenant's burden of proof. Accordingly, I dismiss the Tenant's claim of \$42.08 for paint.

When considering the matters before me relating to the events which occurred in April 2012, I favor the Tenant's evidence that she was being locked out of the rental unit, as supported by the witness's written submissions, over the Landlord's argument that he did not lock her out and that the Tenant forgot her keys inside the unit and wanted him to bring the keys to her. I favored the evidence of the Tenant over the Landlord, in part because the Landlord contradicted his own testimony by first claiming there was not a chain lock installed on the entrance door and then at the end of the hearing he stated that the Tenant was aware that the house was locked at 10:00 p.m. daily and the chain was put on. Furthermore, the Tenant readily acknowledged that she spilled paint on the floor and replaced a rug. In my view the Tenant's willingness to admit fault when she could easily have stated she did not spill any paint lends credibility to all of her evidence.

In *Bray Holdings Ltd. V. Black* BCSC 738, Victoria Registry, 001815, 3 May, 2000, the court quoted with approval the following from *Faryna v. Chorny* (1951-52), W.W.R. (N.S.) 171 (B.C.C.A.) at p. 174:

*The credibility of interested witnesses, particularly in cases of conflict of evidence, cannot be gauged solely by the test of whether the personal demeanour of the particular witness carried conviction of the truth. The Test must reasonably subject his story to an examination of its consistency with the probabilities that surround the current existing conditions. In short, the real test of the truth of the story of a witness is such a case must be its harmony with the*

*preponderance of the probabilities of which a practical and informed person would readily recognize as reasonable in that place and in those conditions.*

I find the Landlord's explanation that the Tenant had already made arrangements to end her tenancy and move out of town and that is why she was not staying at the house to be improbable. Rather, I find the Tenant's explanation that the Landlord was upset with her leaving and he began to lock her out of the unit to be plausible given the circumstances presented to me during the hearing.

After careful consideration of the documentary evidence and for all the aforementioned reasons, I find the Landlord breached section 30 of the Act by unreasonably restricting the Tenant's access to the rental property causing her to reside elsewhere from April 6, 2012 onward. That being said, I find there to be insufficient evidence to indicate why the Tenant left all of her possessions in the rental unit until April 20, 2012 instead of removing them on April 5<sup>th</sup> or April 9<sup>th</sup>, 2012 when she had access to the unit. Therefore the Tenant's award will reflect an amount payable for aggravated damages caused by the Landlord locking her out at various times during the month of April 2012, instead of return of rent, in accordance with section 62 of the Act.

Based on the foregoing, I award the Tenant **\$150.00** as aggravated damages in accordance with section 67 of the Act.

When a Landlord fails to properly complete a condition inspection report, the Landlord's right to claim against the security deposit for damage to the property is extinguished. Because the Landlord in this case did not carry out move-in or move-out inspections or complete condition inspection reports, he lost his right to claim the security deposit for damage to the property.

The Landlord was therefore required to return the security deposit to the Tenant within 15 days of the later of the two of the tenancy ending and having received the Tenant's forwarding address in writing. The Landlord received the tenant's forwarding address on May 15, 2012 but did not return the security deposit within 15 days of that date.

Because the Landlord's right to claim against the security deposit for damage to the property was extinguished, and he failed to return the Tenant's security deposit within 15 days of having received her forwarding address, section 38 of the Act requires that the Landlord pay the Tenant double the amount of the deposit. Therefore, I award the Tenant the return of double her security deposit in the amount of **\$500.00** (2 x \$250.00).

The remainder of the Tenant's claim refers to a contract for service whereby the parties entered into an agreement that the Tenant would clean the unit for exchange of some computer work. Contracts for service do not fall within the jurisdiction of the *Residential Tenancy Act*; therefore I declined to determine matters pertaining to such contracts.

The Tenant has been successful with their application, therefore I award recovery of the **\$50.00** filing fee.

Conclusion

The Tenant has been awarded a Monetary Order in the amount of **\$700.00** (\$150.00 + \$500.00 + \$50.00). This Order is legally binding and must be served upon 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: September 11, 2012.

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Residential Tenancy Branch