



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Dispute Codes:**

MNDC, MNSD, FF, O

### **Introduction**

This matter was scheduled to consider the Tenant's application for compensation for damage or loss under the Act, regulation or tenancy agreement; for return of the security deposit; and to recover the cost of the filing fee from the Landlord. The Hearing was convened on November 20, 2012, and reconvened on January 4, 2013. An Interim Decision was rendered on November 20, 2012, which should be referred to with this Decision.

The parties gave affirmed testimony at the Hearing.

### **Preliminary Matters**

On November 20, 2012, the Tenant's application was adjourned in order to allow both parties to re-serve each other with their documentary evidence. I directed each party to serve the other immediately upon receipt of this Interim Order. I also advised the parties that no documentary evidence, other than the documentary evidence they had already provided to the Residential Tenancy Branch, would be allowed into evidence.

At the reconvened Hearing on January 4, 2013, it was determined that the Tenant re-served the Landlord with her documentary evidence by registered mail sent December 7, 2012. It was also determined that the Landlords re-served the Tenant with their documentary evidence by registered mail sent November 20, 2012.

### **Issues to be Decided**

- Is the Tenant entitled to a monetary order for double the security deposit pursuant to the provisions of Section 38 of the Act?
- Is the Tenant entitled to compensation for the cost of a cable box and loss of quiet enjoyment of the rental unit?

### **Background and Evidence**

This tenancy began in December, 2008 and ended in August of 2012. Monthly rent was \$650.00. The Tenant paid a security deposit in the amount of \$325.00 at the beginning of the tenancy. There was no Condition Inspection Report completed that complies with

the requirements of Section 20 of the regulations, at the beginning of the end of the tenancy. The Landlord has not filed an application against the security deposit.

The Tenant testified that she provided the Landlords with written notice of her forwarding address when she returned the keys to the rental unit on August 13 or 14, 2012. She stated that there was a witness who saw her provide her address to the Landlords. The Tenant provided a written statement from the witness in evidence.

The Landlords denied receiving the Tenant's forwarding address until they received her Notice of Hearing documents. At the November 20, 2012, Hearing, it was determined that the Landlords received the Notice of Hearing documents by registered mail that was sent on September 6, 2012. The Landlords' agent was not certain when the documents were received by the Landlords, but Section 90 of the Act deems service by registered mail to be effective 5 days after mailing, September 11, 2012.

The Tenant gave the following testimony:

The rental unit is a basement suite situated in the Landlords' home. The Tenant testified that there were "massive amounts of noise" throughout the tenancy. She stated that the Landlords' children often jumped off furniture and onto the floor. The Tenant testified that she spoke often to the female Landlord about these disturbances, who offered to put an area rug under the dining table, but this was not done.

The Tenant stated that:

- She battled mould in her bathroom throughout the tenancy. The Landlord would not do anything to get rid of the mould.
- She had to shovel snow and put down salt the walkway and stairs to her front door. The stairs were rotting and unsafe. She and a friend fell on the stairs.
- Her refrigerator had to be replaced 3 times during the tenancy. One of the fridges was a small filthy apartment sized fridge which was left for the Tenant at the top of a flight of stairs for her to clean and install herself.
- The Landlords had a chicken coop in the backyard of the rental property. Roosters woke her up early in the mornings and the smell was really bad;
- The chicken coop attracted mice and rats and she had to put poison in the walls and under the sink because the Landlords would not do anything to get rid of them. She asked the Landlords to patch holes in the walls so the mice and rats couldn't come back, but the Landlords did not do so.
- The Landlords would demand rent before the end of the month, usually on the 27<sup>th</sup> or 28<sup>th</sup>. The Landlords told the Ministry that she was a thief and told the cable provider that she owed two months' rent and stole the cable box, which

jeopardized her standing with the Ministry. These were both false allegations. The Tenant paid the Landlords \$50.00 for the cable box. The Tenant has returned the cable box, but the Landlords refused to repay her. The Tenant paid rent for August, 2012, but the Landlords issued a Notice to End Tenancy for Unpaid Rent. The Landlords refused to provide her with a receipt.

- The Landlords also told the cable provider that the Tenant had stolen the cable box.
- The male Landlord called her a prostitute and knocked on her windows. He spat at her and was verbally abusive. He made sexual advances towards her. The Landlords set up a video camera, pointed directly at her stairs.
- The Landlords turned off her heat in the winter time.
- The male Landlord tried to control who her visitors were.

The Tenant provided documentary evidence including photographs, copies of 2 tenancy agreements, a Notice to End Tenancy for Unpaid Rent, copies of two letters the Tenant received from the Ministry, and three written statements from witnesses.

The Tenant seeks a monetary award, calculated as follows:

Return of the money she paid the Landlords for the cable box	\$50.00
Double the amount of the security deposit	\$650.00
Compensation for harassment and loss of quiet enjoyment	<u>\$3,000.00</u>
TOTAL CLAIM	\$3,650.00

The male Landlord gave the following testimony:

The Landlord acknowledged that the Tenant returned the cable box. He stated that the Tenant only paid him \$30.00 for the cable box.

The Landlord testified that he fixed any damage and replaced the fridges as soon as the Tenant made him aware.

The Landlord stated that the Tenant was aware before she agreed to rent the rental unit that the Landlords had children and that she knew it would be noisy. The Landlord said that Tenant told the Landlords that she loved children.

The Landlord testified that the Tenant did not complain to the Landlords about the chicken coop, only to the SPCA and the City.

The Landlord denied the remaining allegations, stating that they were ridiculous. The Landlord stated that he kept the security deposit and the cable box deposit because the Tenant owed him money for rent.

### **Analysis**

A security deposit is held in a form of trust by the Landlord for the Tenant, to be applied in accordance with the provisions of the Act.

Section 38(1) of the Act provides that (unless a landlord has the tenant's consent to retain a portion of the security deposit) at the end of the tenancy and after receipt of a tenant's forwarding address in writing, a landlord has 15 days to either:

1. repay the security deposit in full, together with any accrued interest; or
2. make an application for dispute resolution claiming against the security deposit.

The Tenant provided a witness statement in evidence, indicating that the witness saw the Tenant handing over the keys and a written forwarding address to the male Landlord at the end of the tenancy. The Landlord testified that he didn't receive the Tenant's forwarding address in writing until he received the Notice of Hearing documents. In any event, I find that the Landlord received written notification of the Tenant's forwarding address on September 11, 2012, which is the date the Notice of hearing documents were deemed served. The Landlord did not return the security deposit within 15 days of receipt of the Tenant's forwarding address, nor did the Landlord file for dispute resolution against the security deposit.

Section 38(6) of the Act provides 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 security deposit. Therefore, I find that the Tenant is entitled to a monetary order for double the security deposit, in the amount of \$650.00, plus accrued interest on the original deposit in the amount of \$.41, for a total of **\$650.41** for this portion of her application.

I accept the Tenant's testimony that she paid **\$50.00** to the Landlords for the cable box. The cable box has been returned and therefore I find that she is entitled to this portion of her claim.

A landlord has a duty under Section 32 of the Act to provide and maintain rental property in a state of decoration and repair that complies with the health, safety and housing standards required by law.

The Tenant did not put any requests for repairs in writing and I find that the Tenant provided insufficient evidence that the Landlords were advised about mould or rodents,

or that the fridges were not replaced in a reasonable amount of time after the Landlords were advised that they were not working properly. I also find that the Tenant did not provide sufficient evidence that she had told the Landlords that their children were making undue noise. A certain amount of noise is to be expected in day to day living with children and the Tenant was aware that there were children living above her when she entered into the tenancy agreement.

However, I accept the Tenant's three witness statements that the stairs were dangerous and in need of repair. I also accept one of the witness' statements that the Tenant and the Witness fell on the stairs because they were dangerous. The Landlord denied that the Tenant told him about the need to repair the stairs, however the Landlords also live on the rental property and therefore the stairs are visible to the Landlords. I also accept the Tenant's witness statement that the male Landlord told him that the Tenant was prostituting herself and that the Landlord had surveillance videos of young men coming and going from the Tenant's home. I find these unsubstantiated remarks to be harassing in nature.

Based on the totality of the evidence, I find that the Tenant's request for \$3,000.00 for loss of peaceful enjoyment and harassment is too high. However, I find that the Landlord breached Section 32 of the Act by failing to repair the stairs and that the Tenant suffered injury as a result of that breach. I further find that the unsubstantiated remarks made to the Tenant's friend about the Tenant caused the Tenant to be humiliated and insulted. Therefore, I award the Tenant the sum of **\$300.00** for this portion of her claim.

There is no indication that the Tenant paid a filing fee and therefore I dismiss her application to recover that cost.

The Tenant has established a total monetary award of **\$1,000.41** and I hereby provide the Tenant with a Monetary Order in that amount.

### **Conclusion**

I hereby provide the Tenant a Monetary Order in the amount of **\$1,000.41** for service upon the Landlords. This Order may be filed in the Provincial Court of British Columbia (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: February 01, 2013

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Residential Tenancy Branch

