



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNDC, FF

### Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67; and
- authorization to recover her filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions and to cross-examine one another.

### Preliminary Issues

The landlord confirmed that she received a copy of the tenant's dispute resolution hearing package sent by the tenant by registered mail on October 13, 2012. I am satisfied that the tenant served her dispute resolution hearing package and her written evidence package to the landlord in accordance with the *Act*. I am also satisfied that the tenant commenced her application for dispute resolution within the two-year time period allowed under section 60 of the *Act*.

The landlord testified that she sent the tenant a copy of her written evidence package by registered mail on November 9, 2012. The landlord provided the Canada Post Tracking Number for this registered mailing to the address identified by the tenant on the tenant's application for dispute resolution. The landlord testified that this mail was returned to her as unclaimed. The tenant testified that she did not receive the landlord's written evidence package. She confirmed that the mailing address identified on her application for dispute resolution was an address where her mail could be sent. I am satisfied that the landlord sent her written evidence to the tenant in accordance with section 88 of the *Act*. In accordance with section 90 of the *Act*, I advised the parties of my finding that the landlord's written evidence package was deemed served to the tenant on November 14, 2012, the fifth day after its registered mailing.

The landlord's written evidence package included only one four paragraph letter that was not already in the tenant's possession. As the landlord could not locate her copy of

that letter during the hearing, I read her letter into evidence at the hearing. The landlord confirmed that this was indeed her sole new piece of written evidence she was submitting for this hearing. The remainder of her written evidence comprised a copy of my October 20, 2010 decision with respect to an application from the landlord for an order of possession and a monetary award for unpaid rent. The tenant confirmed that she had received a copy of that decision and also confirmed that she had not yet paid the landlord the monetary award of \$950.00 issued in my decision and attached order.

At the commencement of the hearing, I noted that the legal principle of *res judicata* prevents me from revising or in any way alter the findings I reached with respect to my final and binding decision of October 20, 2010. I also advised the landlord that I rejected the landlord's claim that the tenant was prevented from seeking compensation arising out of her tenancy because of my October 20, 2010 findings. I noted that the previous application dealt solely with the landlord's application for an order of possession and a monetary award for unpaid rent, and not an application for a monetary award by the tenant. I also noted that I have no role in enforcing the previous monetary Order I issued in the landlord's favour. Instructions on how to enforce that Order were included with my October 20, 2010 decision.

In the tenant's written evidence, the tenant referred to her revised request for compensation of \$13,814.64. The tenant confirmed that she had not amended her application for a monetary award of \$4,000.00. At the hearing, I advised the tenant that the maximum amount that I was willing to consider in her application for a monetary Order was the \$4,000.00, she cited in her application for dispute resolution.

#### Issues(s) to be Decided

Is the tenant entitled to a monetary award for losses arising out of this tenancy? Is the tenant entitled to recover her filing fee for her application from the landlord?

#### Background and Evidence

This periodic tenancy began on May 7, 2010. Monthly rent by the end of this tenancy was \$600.00, payable in advance on the first of each month. As was noted in my October 20, 2010 decision, the tenant did not pay rent for August, September and October 2010. The tenant left the rental unit during late September 2010. However, the landlord who lives above the rental unit, noted that the tenant left without locking her door and without turning off her lights.

In my October 20, 2010 decision, I found that the landlord was entitled to recover unpaid rent for August and September 2010. I accepted "the tenant's undisputed testimony that the landlord removed her belongings from the rental unit after she left

town in late September 2010 and changed the locks without obtaining an order to be allowed to do so.” Under the circumstances, I found that the landlord was not entitled to her claim for unpaid rent for October 2010. I issued a monetary Order in the landlord’s favour in the amount of \$950.00, an amount that also allowed the landlord to retain the tenant’s \$300.00 security deposit for this tenancy.

Upon returning to the rental unit on October 15, 2010, the tenant called the police when she found her locks changed. The landlord gave undisputed testimony that the tenant was able to retrieve all of her possessions when the tenant returned. These belongings had been stored for her in the rental unit.

The tenant’s application for a monetary award of \$4,000.00 included many expenses that the tenant incurred in the period between leaving the rental unit on October 15, 2010 and her start of a new tenancy in another rental unit in this same northern British Columbia community. The tenant provided many receipts, credit card statements, photographs and other documents to support her claim for a monetary award. These receipts were submitted in limited order by the tenant. However, she did provide the following itemization of the amounts claimed as part of her \$13,814.64 tally of her losses arising out of this tenancy:

<b>Item</b>	<b>Amount</b>
Hotels	\$3,326.99
Food	2,023.41
Gas	1,074.00
Miscellaneous	2,357.34
Aggravation	5,000.00
Mail	32.90
<b>Total of Above Items</b>	<b>\$13,814.64</b>

### Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

Section 7(1) of the *Act* establishes that a tenant who does not comply with the *Act*, the regulations or the tenancy agreement must compensate the landlord for damage or loss that results from that failure to comply. My October 20, 2010 decision found that the landlord had no legal authority to change the locks and end this tenancy when the tenant left town in late September 2010. At this hearing, the landlord confirmed that she did not post any type of notice on the tenant's rental unit seeking an inspection of the rental unit to determine if the premises had in fact been abandoned by the tenant. The tenant had not been paying her rent for the previous two months and the landlord had posted a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) on the tenant's door on September 1, 2010. However, the landlord had not obtained an Order of Possession for these premises when the landlord entered the tenant's premises and changed her locks. At that time, the landlord realized that the tenant had not vacated the rental premises and had left her possessions in the rental unit. Although the landlord had applied for an Order of Possession based on the 10 Day Notice, the landlord did not wait to obtain a decision regarding that 10 Day Notice, but took possession of the rental unit in advance of the October 20, 2010 hearing.

Based on the evidence before me, I find that the tenant is entitled to a monetary award for losses that she incurred as a result of the landlord's failure to comply with the *Act* and their tenancy agreement. However, section 7(2) of the *Act* places a responsibility on a tenant claiming compensation for losses resulting from a landlord's non-compliance with the *Act* to do whatever is reasonable to minimize that loss.

In considering the tenant's application for losses arising out of the landlord's actions in this tenancy, I have attempted to take into account what reasonable steps a tenant living in this tenant's community in northern British Columbia would be expected to take to mitigate the landlord's losses. This becomes very important because of the rather unusual journey that the tenant took between October 15, 2010 when she realized that she was without a rental unit and November 17, 2010, when she took possession of another rental unit in the same community.

I find that the tenant's receipts demonstrate that the tenant initially stayed in hotels in her northern B.C. community for the first three nights after she discovered that the landlord had changed the locks to her rental unit. However, after this initial three-day period in her own community, her receipts and the remainder of her oral and written evidence reveal a 17- day process of travel she undertook to the Lower Mainland, Victoria, mid-Vancouver Island, the Kootenays, the Okanagan, Whistler and points in between. She explained that she was feeling very stressed at the time. While I sympathize with the anxiety she experienced regarding her eviction from her home, I am at a loss to understand how her claims for compensation for her province-wide

travel and her hotel bills represent legitimate expenses for which the landlord should be held responsible. Her list of hotels included a four-night stay at a prestigious Vancouver hotel where her room charges and taxes were almost double her monthly rent at her rental unit. Although the tenant testified that she was involved in an ongoing internet search for alternative accommodations in her northern community over this period, I am not at all satisfied that the measures she was taking as she travelled across a large swath of the province had any legitimate connection to her attempt to find accommodation in her community. Had she located potentially suitable accommodations during her travels, she would have been unable to properly inspect the prospective rental premises.

After the tenant's absence from her community from October 19, 2010, she returned to her northern community on or about November 4, 2010. She remained there until she took possession of a rental unit in the same community where she was residing during the tenancy under dispute. She said that she could not recall when she actually signed her new tenancy agreement.

I accept that the landlord's actions did require the tenant to stay in hotel rooms for a period of time before the tenant could locate alternate accommodations. However, I find that the tenant has presented little evidence that the measures she was taking from October 19, 2010 until November 4, 2010 were legitimate attempts to mitigate the landlord's losses. The tenant eventually did return to her community and found new accommodations in mid-month. I find that had the tenant directed similar attention to her search during the period from October 19, 2010 until the end of that month, she may very well have been able to find suitable accommodations by early November 2010.

I have also taken into account that the effect of my previous decision allowed the tenant to forego the payment of monthly rent for October 2010, due to the landlord's actions in ending this tenancy early and without taking the proper steps. Thus, the tenant has gained the benefit of foregoing the payment of \$600.00 of rent that she would otherwise have been responsible for paying to the landlord for October 2010. I also note that the tenant paid no rent for November 2010, until she took possession of her new premises on November 17, 2010.

In determining the amount of compensation that the tenant is entitled to receive for the losses she incurred by having to rent hotel rooms, I find that the daily hotel rate of \$113.20, a figure cited by the tenant at the hearing, is reasonable for her community for the first three days following the end of her tenancy on October 15, 2010. In arriving at this rate, I note that the tenant clearly incurred higher daily accommodation expenses than \$113.20 throughout most of the period that she remained without a permanent

residence following the end of her tenancy. In addition to the initial three days when she remained in her community, I allow the tenant a further 7 days, an allowance that I find reasonable given her continuation of the process of seeking accommodations once she returned to her community on November 4, 2010 until November 17, 2010, when she took possession of her new rental premises. I find that had she remained in her community, actively seeking suitable accommodations rather than leaving on October 18, 2010, she may have been seeking accommodations at a time when accommodations typically become available. When she did return on November 4, 2010, many potential rental units would not typically be available until December 1, 2010. For these reasons, I limit the tenant's eligibility for a monetary award for accommodations to a 10-day period. By the time of her return to her community, I believe that the tenant bore some responsibility to mitigate the landlord's losses by selecting more economical accommodations. Over this 7-day period, I allow the tenant a monetary award of \$90.00 per day for accommodations.

In total, I find that the tenant has demonstrated eligibility to recover 10 days of hotel expenses totalling \$969.60 (i.e., 3 days at a daily rate of \$113.20 = \$339.60 + 7 days at a daily rate of \$90.00 = \$630.00 for a total of \$969.60). From this amount, I deduct the \$600.00 that she did not pay for October 2012. This reduces the tenant's eligibility for accommodation losses she incurred to \$369.60 ( $\$969.60 - \$600.00 = \$369.60$ ).

I also allow the tenant to recover the costs of meals at a rate of \$30.00 per day for a 10 day period totalling \$300.00, which resulted from her loss of her rental unit over this period.

In addition, I allow the tenant to recover \$62.99 representing 16/33 of her \$129.92 in storage expenses during the period from October 15 until November 17, 2012, when she took occupancy of her new rental unit. I do not allow the tenant to recover storage expenses during the time when she was not in her community, as I do not accept that she was actively attempting to mitigate the landlord's losses over this period.

The tenant also submitted into written evidence a receipt for the landlord's reimbursement of the tenant's \$972.18 cost of renting a truck that she used to travel the province, as well as significant gas receipts. She said she slept in the truck at times. She entered written evidence that she also "hailed some belongings around looking for a place live" in this truck. I accept that the tenant no doubt encountered unusual expenses that she would not have incurred had she been living in her rental unit, even if she had remained in her community seeking alternate accommodations. However, I do not accept that these expenses would have required the landlords' reimbursement of \$1,074.00 in gas expenses or her renting of a truck for \$972.18 to transport her around

the province. Rather, I find that she is entitled to a more reasonable monetary award of \$100.00, to look after miscellaneous expenses that she would have incurred while she sought alternate accommodations.

I confirm that the monetary awards as set out above are designed to take into account all of the tenant's claims for damage and losses arising out of this tenancy.

I have also given careful consideration to the tenant's claim for damage to a series of bedding related items including the following:

- \$256.48 to a duvet;
- \$200.01 to a duvet cover;
- \$365.12 to pillows; and
- \$164.64 to sheets and pillow cases.

I heard conflicting testimony from the parties as to whether the landlord was in any way responsible for the damage to these items shown on the tenant's photographs. The tenant testified that these items were so damaged that she had to replace them. She claimed that the landlord piled all of her belongings including food items on top of these items, thus damaging them. The landlord and her son testified that there was no food in the tenant's fridge and any of the tenant's food that was in the kitchen was placed in boxes and kept separate from her bedding. They testified that the tenant accepted her belongings when she returned to the rental unit and none of her belongings went missing or were damaged during their safekeeping of these items.

Based on a balance of probabilities, I find that the tenant has not demonstrated her entitlement to a monetary award for any of these items. I am not satisfied that these were damaged during the period when the landlord held these items in one of the rooms of the tenant's former rental unit. I dismiss this element of the tenant's application without leave to reapply.

I also dismiss without leave to reapply the remainder of the tenant's claim for damage, which included claims for massage, taxis, gym usage, BC Ferries, sleeping pills, supplements and various other remedies. I find that the tenant has demonstrated insufficient entitlement to any monetary award for these items. I have also considered and dismissed without leave to reapply, with the exception of those items outlined above, the tenant's application for a monetary award of \$2,023.41 for food, \$1,074.00 for gas, \$32.90 for mail, \$2,357.34 for miscellaneous expenses, and \$5,000.00 for aggravation.

As the tenant has been partially successful in her application, I allow her to recover \$25.00 of her filing fee from the landlord.

### Conclusion

I issue a monetary Order in the tenant's favour in the following terms, which allows the tenant to recover damage and losses arising out of her tenancy and to recover her filing fee from the landlord:

<b>Item</b>	<b>Amount</b>
Monetary Award for Accommodations	\$369.60
Meals	300.00
Storage	62.99
Miscellaneous	100.00
Recovery of Partial Filing Fee for this Application	25.00
<b>Total Monetary Order</b>	<b>\$857.59</b>

The tenant is provided with these Orders in the above terms and the landlord must be served with a copy of these Orders as soon as possible. Should the landlord fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders 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: January 23, 2013

---

Residential Tenancy Branch



