



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDC, MNSD, FF

### Introduction

This matter dealt with an application by the Tenant for the return of double the security deposit, for monetary compensation for loss or damage under the Act, regulations or tenancy agreement and to recover the filing fee for this proceeding.

The Tenant said he served the Landlord with the Application and Notice of Hearing (the "hearing package") by registered mail on November 21, 2012. Based on the evidence of the Tenant, I find that the Landlord was served with the Tenant's hearing package as required by s. 89 of the Act and the hearing proceeded with both the Landlord and the Tenant in attendance.

### Issues(s) to be Decided

1. Is the Tenant entitled to the return of double the security deposit?
2. Is the Tenant entitled to compensation for loss or damage and if so how much?

### Background and Evidence

This tenancy started on December 15, 2011 as a month to month tenancy. The tenancy agreement was verbal as the Landlord rented the house from the owner and then she sublet to the Tenant. Rent was \$475.00 plus a 1/3 share of the utilities per month payable in advance of the 1<sup>st</sup> day of each month. The Tenant paid a security deposit of \$225.00 and the Tenant said he paid utility deposits to the Landlord of \$120.00 for each utility, the gas, the electricity and the cable for a total of \$360.00. The Tenant provided bank statements to support his claim that he paid utility deposits to the Landlord. The Tenant said he has not received his deposits back and is requesting compensation to recover all the deposits he has paid.

The Tenant said there was no move in or move out condition inspection reports completed and he gave the Landlord his forwarding address in writing on August 15, 2012.

The Tenant said the Landlord evicted him without a proper Notice to End Tenancy. The Tenant said the tenancy ended on August 1, 2012 and he emailed a mutual end of

tenancy document to the Landlord on July 31, 2012 which the Landlord signed, but the Tenant did not sign. The Tenant said he is claiming \$450.00 for costs that he incurred because of the eviction. The Tenant said these costs were paid mostly to his friends to help him while he was in transition to a new rental unit. As a result the Tenant said he does not have receipts to prove or verify the expenses.

The Tenant continued to say he is also claiming \$450.00 for loss of quiet enjoyment while he lived in the rental unit as he is a student and he could not study because of the Landlord's partying and disturbing him. The Landlord said the Tenant and she did not get along and that is why she requested the Tenant to move out. The Landlord said she viewed the tenancy more as roommates because they were sharing the rental unit. The Landlord said that she did collect a security deposit and rent from the Tenant.

In addition the Tenant said he is claiming \$187.74 in storage costs because he had to store his belongings at a storage facility while he was in transition to a new rental unit. The Tenant said he included receipts for the storage costs and the receipts total \$187.74.

As well the Tenant is requesting to recover the \$50.00 filing fee for this proceeding and the mail expenses he incurred of \$20.34 to mail the application and evidence to the Landlord.

The Landlord said she kept the Tenant's security deposit because the tenancy ended abruptly and the Tenant had outstanding bills to pay the Landlord. The Landlord said these bills were the Tenant's share of the utility bills and other house hold expenses. The Landlord said she has the bills itemized, but she did not send them to the Tenant or into the hearing as evidence.

The Landlord said in closing that she feels like the Tenant is trying to take advantage of her, because the tenancy did not work out and now the Tenant is claiming compensation for things that the Landlord does not think she is responsible for. The Landlord continued to say she understands the Tenant's claim for double the security deposit, but she does not think the Tenant's other claims are right.

The Tenant said in closing that he is a student and had a health issue at the time he was evicted so this was a very difficult time for him and he incurred costs because of the eviction. The Tenant said he believes his claims are justified.

## Analysis

Section 38 (1) says that except as provided in subsection (3) or (4) (a), within 15 days after the later of

- (a) the date the tenancy ends, and
- (b) the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one of the following:

- (c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;
- (d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

And Section 38 (6) says if a landlord does not comply with subsection (1), the landlord

- (a) may not make a claim against the security deposit or any pet damage deposit, and
- (b) **must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.**

I find that the Tenant did give the Landlord a forwarding address in writing on August 15, 2012. The Landlord did not repay security deposit to the Tenant within 15 days of the end of the tenancy or 15 days after receiving the Tenant's forwarding address in writing, nor did the Landlord apply for dispute resolution. Consequently I find for the Tenant and I award the Tenant double the security deposit of \$225.00 in the amount of  $\$225.00 \times 2 = \$450.00$ .

For a monetary claim for damage of loss to be successful an applicant must prove a loss actually exists, prove the loss happened solely because of the actions of the respondent in violation to the Act, the applicant must verify the loss with receipts and the applicant must show how they mitigated or minimized the loss.

With regard to the Tenant's claim for the return of the utility deposits in the amount of \$360.00, I accept the Tenant's evidence and testimony that he did pay these amounts to the Landlord. The Landlord does not dispute the Tenant paid these deposits to her and the Landlord said she has not returned these deposits to the Tenant as the Landlord said the Tenant has outstanding utility bills that she has applied the deposits to. I find the Landlord has not provided any evidence or proof that the Tenant had outstanding utility bills; therefore I find that the Tenant has established grounds to be awarded the full amount of the Utility deposits in the amount of \$360.00.

The Tenant's claims for \$450.00 in eviction costs and \$187.74 in storage costs are monetary claims that resulted by how the tenancy ended. The Tenant said he was evicted resulting in these costs and the Landlord said they had a verbal and then a written mutual agreement to end the tenancy so the costs do not apply. As the Tenant emailed the Landlord the Mutual End to Tenancy form and there was no formal Notice to End the Tenancy given to the Tenant from the Landlord, I find that the tenancy ended as a result of a mutual agreement between the Tenant and the Landlord. Consequently the Tenant's claims for storage costs and for eviction costs are not applicable as the Tenant was not evicted. I dismiss the Tenant's claim for storage costs of \$187.74 and the eviction costs of \$450.00 without leave to reapply.

For a claim for loss of quiet enjoyment to be successful a party must provide corroborating evidence or testimony to prove the claim. If there is no corroborative evidence or testimony then it is just the applicant's word against the respondent's word. The burden of proving a claim lies with the applicant and when it is just the applicant's word against that of the respondent that burden of proof is not met. Consequently I dismiss the Tenant's claim for \$450.00 for loss of quiet enjoyment of the rental unit during the time the Tenant lived in the unit as there is no corroborative evidence to prove the claim.

In addition the Tenant's claim for mailing costs incurred in making the application of \$20.34 are not eligible claims and as a result I dismiss the mailing costs of the application without leave to reapply.

As the Tenant was partially successful in this matter I further order the Tenant to recover the filing fee of \$50.00 for this proceeding from the Landlord. The Tenant will receive a monetary Order as follows:

Double the security deposit	\$450.00
Return of utility deposits	\$ 360.00
Recover filing fee	\$ 50.00
Balance owing to the Tenant	\$860.00

### Conclusion

I find in favour of part of the Tenant's monetary claim. Pursuant to sections 38 and 67 of the Act, I grant a Monetary Order for \$860.00 to the Tenant. The order must be served on the Respondent and is enforceable through the Provincial Court of British Columbia (small claims court) 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 20, 2013

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Residential Tenancy Branch

