



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Wilson Recovery Society / 50 East Cordova Holdings Ltd.  
and [tenant name suppressed to protect privacy]

## DECISION

Dispute Codes: MNDC, MNSD

### Introduction

This hearing was scheduled in response to the tenant's application for a monetary order as compensation for damage or loss under the Act, Regulation or tenancy agreement / and compensation reflecting the double return of the security deposit. The tenant and legal counsel acting on his behalf attended, and the tenant gave affirmed testimony.

Despite service of the application for dispute resolution and notice of hearing (the "hearing package") by way of registered mail, the landlord did not appear. Evidence submitted by the tenant includes the Canada Post tracking number for the registered mail, and the Canada Post website informs that the item was ultimately "unclaimed by recipient" in spite of a "notice card left indicating where item can be picked up." Irrespective of the unclaimed status of the hearing package, where it concerns service, I find that the hearing package has been served in compliance with section 89 of the Act which speaks to **Special rules for certain documents**.

### Issue(s) to be Decided

Whether the tenant is entitled to the above under the Act, Regulation or tenancy agreement.

### Background and Evidence

It is understood that the unit which is the subject of this dispute, is a single room located within a 4 storey building that once accommodated approximately 39 single rooms for rent. There is no written tenancy agreement in evidence for this tenancy which began on or about March 1, 2008, and ended on or about June 22, 2011. While tenancy was continuous throughout this period, the tenant resided successively in three separate rooms over a period of nearly 40 months for the approximate periods of time, as follows:

- # 21: March 1, 2008 to February 28, 2009
- # 6: March 1, 2009 to August 31, 2010
- # 4: September 1, 2010 to June 22, 2011

The tenant lived alone in unit # 21 and unit # 6. He testified that monthly rent was \$375.00, and that a security deposit of \$187.50 was collected. He shared unit # 4 with another resident, tenant "BW," however, it is understood that rent was unchanged.

The tenant alleges the existence of miscellaneous problems and deficiencies in each of the three different rooms he rented and in the shared kitchen, which include but are not necessarily limited to the following:

- the presence of cockroaches, rodents and bedbugs
- the existence of mould and mildew
- the unavailability of hot water in the sink located in the room
- the non-functioning taps on the sink located in the room
- the absence of functioning burners on the stove located in the shared kitchen

Documentary evidence in support of these claims includes an ORDER issued against the landlord by the City of Vancouver dated March 1, 2011, and an Administrative Report from the City of Vancouver's Chief Building Official to the Standing Committee on Planning and Environment by date of June 16, 2011. Both of the foregoing speak variously to bylaw violations, as well as to unsafe and unsanitary conditions.

The tenant claims that repeated expressions of concern to the landlord and the building manager about the above problems, failed to result in remedial action being taken. There is no evidence that the tenant sought to mitigate his circumstances by addressing his concerns with the Residential Tenancy Branch at any time during the tenancy.

The tenant testified that tenancy ended when the landlord locked him out of his room. He claims the landlord took this action after learning of the tenant's involvement in advocating for improvements in the living conditions in the building. Upon being evicted, the tenant sought emergency shelter and was eventually housed on or about July 1, 2011 in a location where he still presently resides.

By letter dated October 31, 2011, the landlord was informed of the tenant's forwarding address for the purposes of repayment of the security deposit. However, to date, no portion of the tenant's security deposit has been repaid.

## Analysis

Based on the documentary evidence, the affirmed / undisputed testimony of the tenant, and the applicable legislation and guidelines, the two principal aspects of the tenant's application and my findings around each are set out below.

**\$375.00:** *(2 x \$187.50) double the return of the original security deposit.*

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 security deposit.

I find that the landlord neither repaid the security deposit, nor filed an application for dispute resolution within 15 days after receiving the forwarding address in writing. Accordingly, I find that the tenant has established entitlement to the full amount claimed.

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**\$6,480.00:** *damages reflecting reduction in value of the tenancy / restriction or termination of services / non-pecuniary losses (described broadly as "25% of the monthly rent for the duration of the tenancy, and one month's compensation for homelessness").*

Section 32 of the Act addresses **Landlord and tenant obligations to repair and maintain**:

32(1) A landlord must provide and maintain residential property in a state of decoration and repair that

- (a) complies with the health, safety and housing standards required by law, and
- (b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

(2) A tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access.

(3) A tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.

(4) A tenant is not required to make repairs for reasonable wear and tear.

(5) A landlord's obligations under subsection (1)(a) apply whether or not a tenant knew of a breach by the landlord of that subsection at the time of entering into the tenancy agreement.

Section 27 of the Act speaks to **Terminating or restricting services or facilities**:

27(1) A landlord must not terminate or restrict a service or facility if

- (a) the service or facility is essential to the tenant's use of the rental unit as living accommodation, or
- (b) providing the service or facility is a material term of the tenancy agreement.

(2) A landlord may terminate or restrict a service or facility, other than one referred to in subsection (1), if the landlord

- (a) gives 30 days' written notice, in the approved form, of the termination or restriction, and
- (b) reduces the rent in an amount that is equivalent to the reduction in the value of the tenancy agreement resulting from the termination or restriction of the service or facility.

Further, Residential Tenancy Policy Guideline # 16 addresses "Claims in Damages," and provides in part as follows:

### **Types of Damages**

An Arbitrator may only award damages as permitted by the Legislation or the Common Law. An Arbitrator can award a sum for out of pocket expenditures if proved at the hearing and for the value of a general loss where it is not possible to place an actual value on the loss or injury. An Arbitrator may also award "nominal damages," which are a minimal award. These damages may be awarded where there has been no significant loss or no significant loss has been

proven, but they are an affirmation that there has been an infraction of a legal right.

In addition to other damages an Arbitrator may award aggravated damages. These damages are an award, or an augmentation of an award, of compensatory damages for non-pecuniary losses. (Losses of property, money and services are considered "pecuniary" losses. Intangible losses for physical inconvenience and discomfort, pain and suffering, grief, humiliation, loss of self-confidence, loss of amenities, mental distress, etc. are considered "non-pecuniary" losses.) Aggravated damages are designed to compensate the person wronged, for aggravation to the injury caused by the wrongdoer's willful or reckless indifferent behavior. They are measured by the wronged person's suffering.

Following from all the above, I find that for this aspect of the tenant's application he has established entitlement to compensation of **\$3,000.00**, which is calculated as follows:

40 (# months of overall tenancy) x \$75.00 (20% of monthly rent of \$375.00)

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**Total Entitlement: \$3,375.00** (\$375.00 + \$3,000.00).

#### Conclusion

Pursuant to section 67 of the Act, I hereby issue a **monetary order** in favour of the tenant in the amount of **\$3,375.00**. 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: May 17, 2013

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Residential Tenancy Branch