



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **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. Both parties attended and / or were represented and gave affirmed testimony.

### Issue(s) to be Decided

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

### Background and Evidence

The unit which is the subject of this dispute is 1 of 3 rented rooms located in the basement of a house. The landlords reside in the upper portion of the house.

There is no written tenancy agreement in evidence for this tenancy which began when the tenant moved into the unit on December 28, 2012. Monthly rent is \$450.00, and a security deposit of \$225.00 was collected. Rent was paid in full up to March 31, 2013 before the tenant vacated the unit without notice on April 2, 2013. When the tenant vacated, \$125.00 of his security deposit was returned, and the landlord retained the balance of \$100.00 (\$225.00 - \$125.00). The tenant did not provide the landlord with a forwarding address when tenancy ended. The landlord testified that a forwarding address was only made known to him when the tenant's application for dispute resolution was received.

### Analysis

The full text of the Act, Regulation, Residential Tenancy Policy Guidelines, Fact Sheets, forms and more can be accessed via the website: [www.rto.gov.bc.ca](http://www.rto.gov.bc.ca)

Based on the documentary evidence and testimony, the various aspects of the tenant's application and my findings around each are set out below.

\$200.00 (2 x \$100.00): *double return of 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 amount of the security deposit.

As earlier noted, the tenant did not provide the landlord with a forwarding address when tenancy ended. During the hearing, however, the landlord confirmed that by way of the tenant's application for dispute resolution and related documentary evidence, he now has the tenant's forwarding address (mailing address).

Accordingly, I find that the landlord will be deemed to have received the tenant's forwarding address (mailing address) five (5) days after the date of this decision. I further find that the landlord will have fifteen (15) days from that fifth (5<sup>th</sup>) day to deal with the tenant's security deposit pursuant to the provisions in section 38 of the Act. In the meantime, this aspect of the tenant's application is hereby dismissed with leave to reapply.

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\$225.00 (3 x \$75.00): *compensation arising from insufficient heat for 3 months.*

Section 27 of the Act speaks to **Terminating or restricting services or facilities**, in part as follows:

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.

Further to the absence of a written tenancy agreement or other relevant documentary evidence, there is no evidence that the tenant formally raised his concerns about

insufficient heat directly with the landlord during the term of the tenancy. Further, the tenant's application for dispute resolution was filed approximately 2 ½ months following the end of tenancy. In the result, I find that the tenant has failed to meet the burden of proving entitlement to compensation, and this aspect of his application is therefore hereby dismissed.

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\$150.00 (3 x \$50.00): *compensation arising from the presence of "mice, black ants, silver fish, mold, mildew" for 3 months.*

Section 32 of the Act addresses **Landlord and tenant obligations to repair and maintain**, in part as follows:

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.

Similar to the reasons set out above, there is no evidence that the tenant formally raised his concerns about the presence of "mice, black ants, silver fish, mold, mildew" directly with the landlord during the term of the tenancy, or other relevant documentary evidence which supports the existence of such things. Further, the tenant's application for dispute resolution was filed 2 ½ months following the end of tenancy. Additionally, there is no documentary evidence that the unit failed in some way to comply with "the health, safety and housing standards required by law." Accordingly, I find that the tenant has failed to meet the burden of proving entitlement to compensation, and this aspect of his application is therefore hereby dismissed.

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\$450.00: *compensation equivalent to 1 month's rent.*

Further to matters already addressed immediately above, the tenant alleges various breaches to his right to quiet enjoyment arising from the landlord's prohibition around guests, disturbances from other tenants in the basement, and absence of proper notice from the landlord for entry to the unit. In support of some of his claim(s), the tenant has made reference to another hearing and a decision issued in a separate dispute from his own. However, a decision in the tenant's dispute must be reached in consideration of the documentary evidence and testimony provided in relation to the particular

circumstances of his dispute, not someone else's. In summary, I find that the tenant has failed to meet the burden of proving entitlement to compensation, and this aspect of his application is therefore hereby dismissed.

### Conclusion

Aspects of the tenant's application are variously either dismissed or dismissed with leave to reapply.

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 09, 2013

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Residential Tenancy Branch

