



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDC, MNSD, RPP, FF, O

### Introduction

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

The Tenant said she served the Landlord with the Application and Notice of Hearing (the “hearing package”) by registered mail on October 17, 2013. 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 in the Landlord’s absences.

### Issues(s) to be Decided

1. Is the Tenant entitled to the return of double the security deposit?
2. Is there a loss of damage to the Tenant and if so how much?
3. Is the Tenant entitled to compensation for the loss or damage and if so how much?
4. Is the Tenant entitled to an Order of Possession to recover personal property?
5. What other considerations are there?

### Background and Evidence

This tenancy started on June 1, 2013 as a month to month tenancy. The tenancy ended July 31, 2013. Rent was \$1,000.00 per month payable in advance of the 1<sup>st</sup> day of each month. The Tenant paid a security deposit of \$700.00 in May, 2013.

The Tenant said that she moved out of the rental unit on July 31, 2013 as a result of the Landlord telling her on July 1, 2013 she was evicted, because the Landlord constantly entered the unit and harassed the Tenant and her family, the Landlord did not repair items that he said he would at the start of the tenancy and the Tenant was afraid of the Landlord. The Tenant said she called the Police on two occasions because of incidents with the Landlord harassing her. The Tenant included the Police Offices cards and the file numbers.

As a result of the Landlord's harassing behaviour the Tenant said she has filed the following application for compensation and to retrieve her property from the Landlord:

1. The return of the June and July, 2013 rent in the amount of \$2,000.00 as the Landlord did not repair items in the rental unit that were essential to the tenancy and the Landlord harassed the Tenants.. Some of the repair items are reattach the toilet in the bathroom, repair floors and window blinds, repair or replace the dishwasher, clean the basement because of a mildew smell, remove the previous tenant's property and remove the Landlord's property from the rental unit and in the yard.
2. The Tenant is also requesting the return of double her security deposit of \$700.00 in the amount of \$1,400.00 as the Landlord has not returned any of the Tenant's security deposit. The Tenant said there was no condition inspection reports completed and she gave the Landlord her forwarding address on August 16, 2013.
3. In addition the Tenant said they moved out in a hurry and she left some property in the back yard. The Tenant is requesting an Order of Possession to get access to the property to recover her property. The Tenant said the property is a gym set, 4 winter tires, drywall and lumber, snow shovel, garden tools, outdoor patio carpet and wooden microwave stand.

The Tenant said in closing this was a bad tenancy as the Landlord appeared pleasant at first and then the Landlord became increasingly aggressive towards her and her family so they left as soon as they could. The Tenant added that if she is successful in getting an order to retrieve her property she will request a Police presence when she is at the rental unit.

### 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 accept the Tenant's testimony that she gave the Landlord a forwarding address in writing on August 16, 2013. 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 by August 31, 2013. Consequently I find for the Tenant and grant an order for double the security deposit of \$700.00 in the amount of  $\$700.00 \times 2 = \$1,400.00$ .

Further I accept the Tenant's undisputed affirmed testimony that the Landlord did not repair items in the rental unit that were agreed to be repaired at the start of the tenancy and that these items were essential to the tenancy. I also accept the Tenant's testimony that the Landlord entered the rental unit without proper notice and as such I accept the Landlord was harassing the Tenant and her family. In addition I recognize that the Tenant did live in the unit and therefore had benefit from the tenancy; therefore I find the Tenant has established grounds for compensation for the condition of the rental unit and for harassment in the amount of \$1,000.00 which is the equivalent of one month's rent. The second month's rent of \$1,000.00 is compensation to the Landlord for the Tenants use of the rental unit during this tenancy which the Tenant has already paid to the Landlord

As the Tenant was successful in this matter I also award the Tenant the \$50.00 filing fee for this proceeding. Pursuant to sections 38, 67 & 72 of the Act a monetary order for the following has been issued to the Tenant.

Compensation for repairs and harassment	\$1,000.00	
Double the Security Deposit	\$1,400.00	
Filing fee	\$ 50.00	
Total		\$2,450.00

Further I accept the Tenant's testimony that she has property at the rental unit and the Landlord will not return the property or the Tenant is afraid to go to the property to collect her belongings. Consequently I award the Tenant an Order of Possession for December 1, 2013 from 12:00 p.m. to 6:00 p.m. to enter the Landlord's property and recover her property.

### Conclusion

An Order of Possession effective for December 1, 2013 from 12:00 p.m. to 6:00 p.m. and a Monetary Order in the amount of \$2,450.00 have been issued to the Tenant. A copy of the Orders must be served on the Landlord: the Order of Possession may be enforced in the Supreme Court of British Columbia and the Monetary Order may be enforced in the Provincial (Small Claims) Court of British Columbia.

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: November 13, 2013

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Residential Tenancy Branch

