



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding 0900706 BC Ltd  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNDC, MNSD, FF

### Introduction

This hearing dealt with the tenant's Application for Dispute Resolution seeking a monetary order.

The hearing was conducted via teleconference and was attended by the tenant and the landlord's agent.

The hearing was originally convened on December 9, 2013 but because the tenant had served her evidence late to the landlord an adjournment was granted to provide the landlord with an opportunity to provide a response to the tenant's evidence and claim.

### Issue(s) to be Decided

The issues to be decided are whether the tenant is entitled to a monetary order for double the amount of the security deposit; and for money owed under the *Residential Tenancy Act (Act)* and to recover the filing fee from the landlord for the cost of the Application for Dispute Resolution, pursuant to Sections 38, 49, 51, 67, and 72 of the *Act*.

### Background and Evidence

The tenant submitted into evidence a copy of a tenancy agreement signed by the parties on April 28, 2010 for a 1 year and 16 day fixed term tenancy beginning on May 15, 2010 that converted to a month to month tenancy on June 1, 2011 for a monthly rent of \$1,500.00 due on the 1<sup>st</sup> of each month with a security deposit of \$750.00 paid.

The parties agree the tenancy ended on August 31, 2011 after the landlord had issued a 2 Month Notice to End Tenancy on July 21, 2011 with an effective vacancy date of September 30, 2011 citing the landlord has all necessary permits and approvals required by law to demolish the rental unit or repair the rental unit in a manner that requires the rental unit to be vacant and the landlord intends to convert the residential property to strata lots or a not-for-profit housing cooperative.

After receiving the Notice the tenant secured new accommodation prior to the effective date and verbally advised the landlord that she would be vacating the rental unit before the end of August 2011.

The landlord submits that he mailed the tenant a refund cheque for the security deposit to the dispute address on August 29, 2011. The landlord has submitted into evidence his cheque registry confirming a cheque was written to the tenant on August 29, 2011. The landlord has confirmed the cheque was never cashed.

The tenant submits that during the first week of September 2011 the landlord contacted her and she provided her forwarding address verbally to the landlord at that time. She submits that the landlord told her he would personally deliver the deposit cheque and that that was the last time she communicated with the landlord.

The tenant testified that she provided her forwarding address in writing on November 28, 2011 and March 11, 2012 by regular mail. The landlord testified he never received any such mail from the tenant.

The tenant submits that when she did not receive any response from the landlord she began to search the internet for information on the company and discovered that the landlord did not have the appropriate demolition permits in place at the time the 2 Month Notice to End Tenancy was issued. She submits that the permits were obtained in February 2012 and that the work was not accomplished until August 2012.

The landlord testified that he could not obtain the permits until some specific work was completed on the property that required the unit to be vacant. Once that work was completed the landlord obtained and received the necessary permits and work began.

### Analysis

Section 38(1) of the *Act* stipulates that a landlord must, within 15 days of the end of the tenancy and receipt of the tenant's forwarding address, either return the security deposit or file an Application for Dispute Resolution to claim against the security deposit. Section 38(6) stipulates that should the landlord fail to comply with Section 38(1) the landlord must pay the tenant double the security deposit.

While I accept that the landlord mailed the tenant her security deposit to the dispute address 2 days before the tenancy ended I also accept that the tenant never received that cheque as it has never been cashed. As such, I find the tenant has never received the return of her security deposit.

However, I find that the landlord was under no obligation to return the deposit to the tenant until she had provided the landlord with her forwarding address in writing. In regard to the tenant's submission that the landlord had agreed to drop off the cheque to her I find that is not likely to have occurred. I find it unlikely that a landlord who had

already mailed a cheque to a tenant would, one week later, agree to deliver her another cheque for the same thing.

The testimony regarding the provision of the tenant's forwarding address in written consisted of disputed testimony and different versions of events. Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their version of events.

As the tenant testified she used mail to provide the landlord with her forwarding address I would expect her to have used registered mail and to provide tracking information. However as she stated she sent the address through regular mail there is no such record. As the landlord disputes the tenant's testimony and in light of her submission regarding the landlord dropping off the cheque I am not persuaded that the tenant, at any time, provided the landlord with her forwarding address in writing until she provided her Application for Dispute Resolution.

Section 39 of the *Act* states that if a tenant does not give the landlord a forwarding address in writing within 1 year from the end of the tenancy the landlord may keep the security or pet damage deposits or both and the tenant has extinguished their right to the return of the deposits.

As the tenancy ended on August 31, 2011 the tenant had until September 1, 2012 to provide the landlord with her forwarding address before her right to the return of the security deposit became extinguished. As the tenant's Application for Dispute Resolution was made on August 30, 2013 and I have found above that is when the tenant provided the landlord with her forwarding address I find the tenant has extinguished her right to the return of the security deposit.

Section 51(2) of the *Act* states that if steps have not been taken to accomplish the stated purpose for ending a tenancy under Section 49 of the *Act* within a reasonable time after the effective date of the notice the landlord must pay the tenant an amount equivalent to double the monthly rent payable under the tenancy agreement.

While I accept the undisputed evidence and testimony from the tenant that the landlord did not have the required permits when the Notice to End Tenancy was issued, I find the issue of permits is not relevant to the compensation sought but rather the issue of whether or not the landlord demolished the rental unit is.

That is to say that had the tenant disputed the Notice to End Tenancy when it was provided to her and before the tenancy ended and she could prove the landlord did not have the permits then the notice would have been found to be ineffective. However, in a claim under Section 51(2) the fact that the rental unit was demolished and not subject to a new tenancy in between the end of the tenancy and the demolition are the only relevant factors.

As such, I find that the tenant has failed to provide any evidence that the rental unit was not demolished within a reasonable time after the end of the tenancy. In fact, she has confirmed that it was demolished within one year of the end of the tenancy. I find, therefore, the tenant is not entitled to any compensation under Section 51(2) of the *Act*.

Conclusion

For the reasons noted above, I dismiss the tenant's Application in its entirety.

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 21, 2014

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Residential Tenancy Branch

