



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Wheeler Cheam Realty  
and [tenant name suppressed to protect privacy]

## **DECISION**

### **Dispute Codes:**

Landlord's application filed October 7, 2013: MNSD; MNDC; MNR; FF

Tenant's application filed January 7, 2014: MNSD; FF

### **Introduction**

This Hearing was scheduled to consider cross applications. The Landlord seeks a monetary award for unpaid rent and compensation for damage or loss under the Act, regulation or tenancy agreement; to apply the security deposit towards partial recovery of his monetary award; and to recover the cost of the filing fee from the Tenant.

The Tenant seeks a monetary award in the equivalent of double the amount of the security deposit and to recover the cost of the filing fee from the Landlord.

The parties gave affirmed testimony at the Hearing.

The Landlord served the Tenant with his Notice of Hearing documents and copies of his documentary evidence by registered mail sent to the Tenant's forwarding address on October 8, 2013. The Landlord provided the registered mail receipt and tracking number in evidence.

The Tenant served the Landlord with her Notice of Hearing documents and copies of her documentary evidence by registered mail on January 7, 2014.

### **Preliminary Matters**

On her Application for Dispute Resolution, the Tenant indicates in the *Details of Dispute* section that she is also seeking "1/4 of September rent for illegal eviction = \$162.00". However, the Tenant did not seek compensation for damage or loss under the Act, regulation or tenancy agreement in her Application.

### **Issues to be Decided**

- Is the Landlord entitled to unpaid rent and loss of revenue for the months of October, 2013 to and including January, 2014?
- Is the Landlord entitled to compensation for the cost of rekeying the locks to the rental unit and for cleaning the rental unit?
- Is the Tenant entitled to a monetary award in the equivalent of double the security deposit pursuant to the provisions of Section 38 of the Act?

### **Background and Evidence**

The Landlord provided a copy of the tenancy agreement in evidence, which is term lease, beginning August 15, 2013 and ending January 31, 2014. Monthly rent was \$650.00, due on the first day of each month. The tenant paid a security deposit in the amount of \$325.00 at the beginning of the tenancy.

The Tenant advised the Landlord by e-mail on September 7, 2013, that she was ending the tenancy. On September 19, 2013, the Tenant advised the Landlord that she had already moved out, with the exception of her bed. Copies of these e-mails were provided in evidence.

The Landlord testified that the Tenant sent him an e-mail on September 20, 2013, advising that he could inspect the rental unit "Monday or anytime next week", and that he would get the keys back when he returned her security deposit. The Landlord stated that the rental unit was dirty, the carpets had not been cleaned, and that he had to re-key the door to the rental unit. The Landlord seeks a monetary award in the amount of \$175.00 for shampooing the carpets and cleaning the rental unit. He also seeks compensation for re-keying the locks in the amount of \$70.16 (\$20.16 for materials and \$50.00 for the service call). Copies of the invoices were provided in evidence.

The Landlord testified that he attempted to re-rent the rental unit, but that he was not able to re-rent the rental unit and that it is still vacant. The Landlord stated that there were other vacant one bedroom suites in the same apartment building. The Landlord seeks a monetary award in the amount of \$2,600.00 for four months' loss of revenue (to the end of the lease period).

The Tenant stated that she discovered that the Landlord had entered another occupant's suite without her knowledge or consent on September 4, 2013. She stated that she was upset about the other occupant's loss of privacy and decided to give her notice on September 7, 2013. The Tenant stated that she paid rent to the end of September, 2013, but that the locks were changed on September 23, 2013. The

Tenant submitted that the invoices provided by the Landlord were not signed and therefore were not proper invoices. The Tenant denied that the rental unit was dirty at the end of the tenancy.

The Landlord testified that the other occupant was complaining about insects in her suite. He stated that the occupant said it was urgent and that she wanted him to deal with it immediately, so he went to the other occupant's suite with another Landlord. He stated that he knocked on the door and no one answered. The Landlord entered the suite and the other occupant was there.

### **Analysis**

#### **Regarding the Tenant's Application:**

The security deposit is held in a form of trust by the Landlord for the Tenant, to be applied in accordance with the provisions of the Act.

Section 38(1) of the Act provides that (unless a landlord has the tenant's written consent to retain a portion of the security deposit) at the end of the tenancy and after receipt of a tenant's forwarding address in writing, a landlord has **15 days** to either:

1. **repay the security deposit** in full, together with any accrued interest; **or**
2. **make an application** for dispute resolution claiming against the security deposit.  
(emphasis added)

Section 38(6) of the Act provides that if a landlord does not comply with Section 38(1) of the Act, the landlord must pay the tenant double the amount of the security deposit.

In this case, I find that the Tenant gave the Landlord her forwarding address on September 27, 2013. The Landlord filed his application against the security deposit on October 7, 2013, which is within the 15 days allowed under Section 38 of the Act. Therefore I dismiss the Tenant's application for compensation equivalent to double the amount of the security deposit.

#### **Regarding the Landlords' Application:**

This is the Landlord's claim for unpaid rent and damage or loss under the Act and therefore the Landlord has the burden of proof to establish his claim on the civil standard, the balance of probabilities.

Section 7(1) of the Act states that if a landlord or tenant does not comply with the Act, regulations or tenancy Agreement, the non-complying landlord or tenant must

compensate the other for damage or loss that results from the breach. Section 67 of the Act provides me with authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

Section 7(2) of the Act requires the party claiming compensation to do whatever is reasonable to minimize the damage or loss.

To prove a loss and have the Tenant pay for the loss requires the Landlord to satisfy four different elements:

1. Proof that the **damage or loss exists**,
2. Proof that the damage or loss occurred **due to the actions or neglect of the Tenant in violation of the Act**,
3. Proof of the **actual amount required to compensate** for the claimed loss or to repair the damage, and
4. Proof that the Landlord followed section 7(2) of the Act by **taking steps to mitigate or minimize the loss or damage being claimed**.

Section 44 of the Act provides the only ways that a tenancy ends. Section 45 of the Act provides the ways a tenant can end a tenancy. Section 52 of the Act requires a notice to end a tenancy to be in writing and signed by the party ending the tenancy. In this case, I find that the Tenant did not comply with Sections 45 or 52 of the Act and that the Landlord suffered a loss as a result of the Tenant's breach of the Act. Therefore, I allow the Landlord's claim in the amount of **\$650.00** for the month of October, 2013.

The Landlord provided a copy of one page of an undated search from the on-line site, indicating the rental unit is for rent. However, there is no indication on the document with respect to when it was posted or for how long it was posted. The Landlord also provided a copy of one page of an undated search from another on-line site. The ad is dated Tuesday, July 16, 2013, which is before the Tenant's tenancy began. Therefore, I find that the Landlord has not provided sufficient evidence to prove part 4 of the test for damages and the remainder of his claim for loss of revenue is dismissed without leave to reapply.

The Tenant paid full rent for the month of September, 2013, and therefore I find that the Tenant had legal occupancy and a right to access the rental unit up to and including September 30, 2013. I find that the Landlord had no right to re-key the locks on September 23, 2013, and therefore this portion of his claim is also dismissed without leave to reapply.

I find that by effectively locking the Tenant out of the rental unit, the Landlord took away her ability to clean the rental unit at the end of the tenancy, and therefore I also dismiss his claim for the cost of shampooing the carpet and cleaning the rental unit.

The Landlord's application had merit and I find that he is entitled to recover the cost of the **\$50.00** filing fee from the Tenant.

### Security Deposit

Pursuant to the provisions of Section 72 of the Act, I hereby order that the Landlord apply the security deposit towards partial satisfaction of his monetary claim.

### Conclusion

I hereby provide the Landlord with a Monetary Order in the amount of **\$375.00** for service upon the Tenant. This Monetary Order represents the balance due to the Landlord after deducting the security deposit from his monetary award. This Order may be filed in the Provincial Court of British Columbia (Small Claims) 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: February 11, 2014

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Residential Tenancy Branch

