



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNDC MNSD FF

### Preliminary Issues

The Landlord submitted evidence which included a copy of a Landlord's Application for Dispute Resolution which had been filled out but not filed with the *Residential Tenancy Branch*. The Landlord confirmed that he had not taken the application to file it with the *Residential Tenancy Branch* and he had not paid a filing fee. Accordingly, I declined to hear matters pertaining to any claim the Landlord may have and instructed him to file his application with the *Residential Tenancy Branch* if he wished to proceed with any claim against the Tenant.

### Introduction

This hearing dealt with an Application for Dispute Resolution filed on October 24, 2013, by the Tenant to obtain a Monetary Order for: money owed or compensation for damage or loss under the Act, regulation or tenancy agreement; the return of double their security deposit; and to recover the cost of the filing fee from the Landlord for this application.

The parties appeared at the teleconference hearing and gave affirmed testimony. At the outset of the hearing I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each party was provided an opportunity to ask questions about the process however, each declined and acknowledged that they understood how the conference would proceed.

During the hearing each party was given the opportunity to provide their evidence orally, respond to each other's testimony, and to provide closing remarks. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

### Issue(s) to be Decided

Has the Tenant proven entitlement to a Monetary Order?

### Background and Evidence

The undisputed testimony provided that the parties entered into a verbal month to month tenancy agreement that began on October 1, 2012. Rent was payable on the first of each month in the amount of \$450.00 and on October 1, 2012 the Tenant paid \$225.00 as the security deposit. No move in or move out condition inspection report forms were completed.

The Tenant testified that she vacated the property by September 30, 2013, and when she asked for the return of her deposit she told the Landlord her new address verbally. She is also seeking to recover an illegal rent increase of \$25.00 per month for the period of April to September 30, 2013. She confirmed that she did not submit proof of this increase and argued that she had to pay her rent in cash and was not provided receipts.

The Landlord confirmed that he collected a security deposit of \$225.00 and confirmed that he has not returned the deposit to the Tenant. He stated the first time he received the Tenant's new address was when he saw it written on her application for dispute resolution. He denies collecting addition money for rent from this Tenant and argued that her rent was always \$450.00 and nothing more.

### Analysis

The *Residential Tenancy Act* defines a “**tenancy agreement**” as an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a rental unit, use of common areas and services and facilities, and includes a licence to occupy a rental unit.

Section 91 of the Act stipulates that except as modified or varied under this Act, the common law respecting landlords and tenants applies in British Columbia.

Common law has established that oral contracts and/or agreements are enforceable. Therefore, based on the above, I find that the terms of this verbal tenancy agreement are recognized and enforceable under the *Residential Tenancy Act*.

The tenant has applied for the return of double the security deposit; however the tenant has not met the burden of proving that she gave the landlord a forwarding address in writing, as required by the Residential Tenancy Act, prior to applying for dispute resolution.

The burden of proving a claim lies with the person making the claim and when it is just that person's word against the word of the other, that burden of proof is not met.

The applicant stated that she told the Landlord her forwarding address; this is not providing her address in writing. Furthermore, the Landlord denies ever receiving a forwarding address from the Tenant prior to receiving the notice of this proceeding.

Therefore in the absence of any proof that a forwarding address in writing was given to the Landlord, it is my finding that, at the time that the Tenant applied for dispute resolution, the Landlord was under no obligation to return the security deposit and therefore this application is premature. I therefore dismiss the claim for double the security deposit, with leave to re-apply.

At the hearing the tenant stated that the address on the application for dispute resolution is the present forwarding address; therefore I find the Landlord is now considered to have received the forwarding address in writing as of today, February 3, 2014 and the Landlord will need to disburse the deposit in accordance with the *Residential Tenancy Act*.

Upon review of the Tenant's claim for reimbursement of an illegal rent increase, there is no documentary evidence to prove the Tenant paid \$475.00 per month from April to September 2013 and the Landlord denies collecting more than \$450.00 per month. Therefore, I find the Tenant has provided insufficient evidence to prove her claim for an illegal rent increase. Accordingly, the claim for compensation for an illegal rent increase is dismissed, without leave to reapply.

### Conclusion

The Tenant's claim for double the security deposit is dismissed, with leave to reapply.

The Tenant's claim for an illegal rent increase is dismissed, without 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: February 03, 2014

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Residential Tenancy Branch

