



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDC, MNSD

### Introduction

This was the reconvened hearing dealing with the tenant's application for dispute resolution under the Residential Tenancy Act (the "Act").

The tenant applied for a monetary order for money owed or compensation for damage or loss and a monetary order for a return of her security deposit.

This hearing began on November 15, 2013, and dealt only with evidence issues, as the tenant stated that she had not received the landlord's documentary evidence due to a recent move.

The parties were informed at the original hearing that the hearing would be adjourned in order to allow the landlord to re-serve her documentary evidence to the tenant.

This hearing proceeded on the merits of the tenant's application after the hearing process was explained.

Thereafter both parties gave affirmed testimony, were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, respond to the other's oral and written evidence, and make submissions to me.

I have reviewed all oral and documentary evidence before me that met the requirements of the Dispute Resolution Rules of Procedure (Rules); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

*Preliminary matter*-The tenant sent documentary evidence, received by the Residential Tenancy Branch ("RTB") on January 20, 2014, which she did not send to the respondent as required by the Rules. I have therefore excluded her documentary

evidence from consideration; however the tenant was not excluded from testifying about this evidence.

### Issue(s) to be Decided

Is the tenant entitled to a return of her security deposit and further monetary compensation?

### Background and Evidence

The written tenancy agreement supplied by the landlord shows that this tenancy began on May 14, 2010, monthly rent was \$750, and the tenant paid a security deposit of \$375 at the beginning of the tenancy.

The evidence shows that this tenancy ended on July 1, 2013, as the result of a house fire.

The tenant's monetary claim is \$3305, which she submitted was for various charges including a vet bill, rent at an alternate location, double her security deposit, moving and storage costs, loss of quiet enjoyment, and pain and suffering.

The tenant's relevant documentary evidence included copies of Facebook communication between the tenant and the landlord, a vet bill and report, receipts for a storage company, and a receipt from a friend for accommodations.

In support of her application, the tenant submitted that she was entitled to recover the costs of losing her home suddenly, due to an unexplained fire in the rental unit, which was a shared duplex.

The tenant submitted that the home containing the rental unit was burned down, and that she was not able to resume living there. Due to this, according to the tenant, the landlord, as owner of the property, was responsible for her relocation costs and other expenses associated with suddenly losing her home.

The tenant explained that she was entitled to vet bills, as she was not home when the fire occurred, resulting in her dog suffering smoke inhalation, nearly dying from a secondary lung infection.

The tenant submitted that the landlord did not return her security deposit within 15 days of the end of the tenancy. In response to my question the tenant said that she informed

the landlord of her forwarding address in a Facebook message, as there was no other way to contact her.

In response, the landlord submitted that the rental home was not burned down, but rather rendered uninhabitable by the fire marshal, later determined to be burned by “accidental fire due to improperly discarded smoking materials.” The landlord submitted that she did not smoke, and that the tenant had unknown people in and out of her rental unit, and that she, the landlord, was out of town when the fire occurred.

The landlord submitted that her mother co-owned the rental property, and that an owner was always present to deal with the remaining matters of the tenancy and the fire inspections. The landlord submitted that she herself was homeless for 3 months.

The landlord submitted that she had informed the tenant several times that she should purchase tenant’s insurance, but that the tenant failed to do so. The landlord submitted that had the tenant purchased tenant’s insurance, the insurance policy would have covered the tenant’s expenses in having to relocate.

The landlord denied being responsible for any vet expenses, as the tenant left her dog alone on many occasions, including the time period in which the fire occurred. The landlord stated that she had to look after the tenant’s dog on many occasions.

As to the tenant’s security deposit, the landlord submitted that it was returned via an email money transfer on August 2, 2013, which the tenant refused to collect. The landlord submitted copies of the Facebook messages to the tenant informing the tenant her security deposit was returned via email.

The landlord further contended that she returned the security deposit even prior to the tenant fully vacating the rental unit, as her belongings and personal property remained in the rental unit until August 14, 2013, although the insurance adjusters sought to have the tenant remove her belongings much earlier.

The landlord’s relevant documentary evidence included Facebook messages between the parties, a written submission in response to the tenant’s application, the email transfer of funds regarding the security deposit, email communication between the landlord and her insurance adjusters, a statement from a former tenant who lived with the tenant from 2011 until October 2012, stating that the landlord had informed by of these tenants of the need to carry tenant’s insurance, an condition inspection report, and photos of the rental unit.

The tenant responded to the landlord's evidence, submitting that she was out of town on work related matters when the fire occurred, and was not a negligent pet owner. The tenant confirmed uncertainty of the Facebook post to the landlord.

### Analysis

Based on the relevant oral and written evidence, and on a balance of probabilities, I find as follows:

In a claim for damage or loss under the Act, which falls in sections 7 and 67, or tenancy agreement, the claiming party, the tenants in this case, has to prove, with a balance of probabilities, four different elements:

**First**, proof that the damage or loss exists, **second**, that the damage or loss occurred due to the actions or neglect of the respondent in violation of the Act or agreement, **third**, verification of the actual loss or damage claimed and **fourth**, proof that the claimant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

Where the claiming party has not met each of the four elements, the burden of proof has not been met and the claim fails.

Section 44 of the Act provides that a tenancy will end, among other things, when a tenancy is frustrated. Residential Tenancy Branch Policy Guideline 34 provides that a contract is frustrated when it becomes incapable of being performed, through no fault of the other party.

I find that the evidence supports that the tenancy agreement became frustrated on July 1, 2013, when an unforeseen fire broke out in the residential property, resulting in the end of the tenancy as the rental unit became unlivable.

The tenant has not shown that the landlord was negligent or has violated the Act as there was no disagreement that the fire was unforeseen.

I therefore find that the tenant has not met her burden of proof and I dismiss her claim for monetary compensation for vet bills, rent at an alternate location, moving and storage costs, loss of quiet enjoyment, and pain and suffering, which would generally be covered by tenant's insurance.

As the tenant's security deposit, under section 38(1) of the Act, at the end of a tenancy a landlord is required to either return a tenant's security deposit or to file an application for dispute resolution to retain the security deposit within 15 days of the later of receiving the tenant's forwarding address in writing and the end of the tenancy if the tenant's right to the security deposit have not been extinguished.

I do not find that the tenant's right to the security deposit have been extinguished by operation of the Act.

In the case before me, the tenant provided her forwarding address via a Facebook post, which is not method recognized by section 88 of the Act for delivery of documents. I find there was also some doubt as to when the tenancy ended if the tenant had her personal property left remaining in the rental unit well into August 2013.

I find in this case the landlord did return the tenant's security deposit as required, whether the tenant chose to collect the same, prior to the tenant filing for dispute resolution, and the tenant is not entitled to collect double the amount of her security deposit.

I do find, however, that the tenant is entitled to a return of her security deposit, as she did not collect the funds the first time the security deposit was returned, and I therefore direct the landlord to return the tenant's security deposit to her again immediately.

In the event the landlord fails to return the tenant's security deposit, I grant the tenant a monetary order in the amount of \$375, which I have enclosed with the tenant's Decision.

### Conclusion

The tenant's application for monetary compensation is dismissed in large part.

The landlord is directed to return the tenant's security deposit again, and I have granted the tenant a monetary order for the amount of the security deposit, or \$375.

Should the landlord fail to pay the tenant this amount without delay after being served the order, the monetary order may be filed in the Provincial Court of British Columbia (Small Claims) for enforcement as an Order of that Court. The landlord is advised that costs of such enforcement are recoverable from the landlord.

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* and is being mailed to both the applicant and the respondent.

Dated: February 03, 2014

---

Residential Tenancy Branch

