



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDC, MNSD, FF

### Introduction

This hearing dealt with a tenant's application for a Monetary Order for damage or loss under the Act, regulations or tenancy agreement; and, return of the security deposit. The landlord did not appear at the hearing. The tenant submitted that he served the landlord with the original application via registered mail sent on November 23, 2013 and the amended application via registered mail sent on December 23, 2013. The tenant provided copies of the registered mail receipts, including tracking numbers, and tracking information as proof of service. I was satisfied the tenant sufficiently served the landlord with the Applications for Dispute Resolution and I continued to hear from the tenant without the landlord present.

### Preliminary Issue – Jurisdiction

I noted that the landlord's address and the rental unit address appearing on the Application for Dispute Resolution were the same. The tenant explained that he rented a bedroom with an ensuite bathroom and had shared access to the kitchen with the landlord; however, the landlord was not the owner of the property. The tenant submitted a copy of a 2013 BC Assessment document for the subject property which identifies the owner as being someone other than the landlord named in this application. Given the landlord and the owner have the same last names, the tenant was of the position that the landlord and the owner are likely related individuals.

The Act applies to landlords and tenants who enter into a tenancy agreement, including oral tenancy agreements, with respect to a rental unit and residential property. Section 4 of the Act specifically exempts certain living accommodation from the Act, including: living accommodation where a tenant and owner share a kitchen or bathroom. In this case, based upon the evidence presented to me, I was satisfied the tenant was not sharing a kitchen or bathroom with the owner of the property. Given the security deposit and rent receipts presented to me as evidence, I am also satisfied the landlord

was acting as a landlord with respect to a rental unit or residential property. Therefore, I found that the Act applies and I accepted jurisdiction to resolve this dispute.

### Issue(s) to be Decided

1. Has the tenant established an entitlement to recovery of rent?
2. Is the tenant entitled to return of the security deposit?

### Background and Evidence

The tenancy commenced October 1, 2013 and the tenant paid a \$250.00 security deposit. The tenant was required to pay rent of \$500.00 on the 1<sup>st</sup> day of every month. The tenant paid rent for the months of October and November 2013 as evidenced by rent receipts provided as evidence.

The tenant submitted that he gave the landlord notice to end tenancy effective November 30, 2013 but offered to move out earlier if the landlord refunded his rent but this was not agreed upon. On November 12, 2013 the tenant came home to find the locks changed and his belongings outside on the steps.

The tenant is seeking to recover rent for the days of November 12 – 30, 2013 due to be locked out of the property on November 12, 2013.

The tenant is also seeking return of his security deposit. The tenant submitted that he provided the landlord with a forwarding address in writing by serving the landlord with his original Application for Dispute Resolution but since the landlord did not refund the security deposit he amended his application on December 23, 2013 to include return of the security deposit.

### Analysis

Upon consideration of everything presented to me, I provide the following findings and reasons.

The Act prohibits a landlord from changing the locks and removing the tenant's possessions from a rental unit without a court order. Based upon the tenant's undisputed submissions, I accept that the landlord changed the locks and removed the tenant's possession without a court order on November 12, 2013 and I grant his request to recover rent he paid for the days of November 12 – 30, 2013. The tenant is awarded \$300.00 for these 18 days as requested.

I accept the tenant's submission that he has provided the landlord with a forwarding address in writing by way of the original application and that he has not yet received a refund of his security deposit. Nor, has the landlord filed an Application for Dispute Resolution to retain it. Therefore, I grant the tenant's request to recover his security deposit in the amount of \$250.00.

As the tenant was successful in this Application I award the \$50.00 filing fee to the tenant.

In light of all of the above, the tenant has been provided a Monetary Order in the total sum of \$600.00 [calculated as \$300.00 + \$250.00 + \$50.00] to serve upon the landlord. The Monetary Order may be filed in Provincial Court (Small Claims) to enforce as an Order of the court.

#### Conclusion

The tenant has been provided a Monetary Order in the sum of \$600.00 to serve and enforce.

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: April 04, 2014

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Residential Tenancy Branch

