



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### Dispute Codes:

MNSD, MNDC, RPP

### Introduction:

This hearing was convened in response to an Application for Dispute Resolution, in which the Tenant applied for the return of the security deposit, for a monetary Order for money owed or compensation for damage or loss, and for an Order requiring the Landlord to return the Tenant's personal property.

Both parties were represented at the hearing. They were provided with the opportunity to submit documentary evidence prior to this hearing, to present relevant oral evidence, to ask relevant questions, and to make relevant submissions to me.

At the outset of the hearing the Landlord advised that he wishes to call witnesses however he did not ask to call them after the hearing commenced nor did he call those witnesses when given the opportunity to present additional evidence at the conclusion of the hearing.

The Tenant stated that on February 17, 2014 the Application for Dispute Resolution and the Notice of Hearing were personally delivered to the Landlord by a third party. The Landlord acknowledged receipt of these documents "sometime" in February of 2014.

On May 20, 2014 the Landlord submitted one document to the Residential Tenancy Branch. He stated that a copy of this document was mailed to the Tenant at her service address, via registered mail, on May 23, 2014. The Landlord cited a Canada Post tracking number to corroborate this testimony. The Tenant stated that she has not received this evidence.

The Landlord's evidence is merely a written submission and the Landlord acknowledged that he would be able to provide all of this evidence through oral testimony and that this physical document does not need to be accepted as evidence.

On May 26, 2014 the Tenant submitted 13 pages of evidence to the Residential Tenancy Branch. She stated that copies of these documents were placed in the

Landlord's mail box on May 26, 2014. The Landlord stated that he received 7 pages of evidence in his mail box and they were accepted as evidence for these proceedings.

The Tenant was given the option of adjourning the matter to provide the Tenant with an opportunity to re-serve the 6 pages of evidence the Landlord did not acknowledge receiving or proceeding with the hearing today with the understanding that I would not be able to consider those 6 pages. The Tenant opted to proceed without the benefit of those 6 pages.

Issue(s) to be Decided:

Is the Tenant entitled to compensation for personal property that the Tenant is missing?

Is there a need to issue an Order requiring the Landlord to return personal property?

Should the security deposit be returned to the Tenant?

Background and Evidence:

The Landlord and the Tenant agree that this tenancy began on July 18, 2012 and that the Tenant was required to pay \$700.00 in rent by the first day of each month. The parties agree that the Tenant paid a security deposit of \$350.00.

The Landlord and the Tenant agree that rent of \$500.00 was paid for June of 2013. The Tenant stated that on May 22, 2013 she paid an additional \$200.00 in rent for June, in cash. The Landlord stated that the Tenant did not pay \$200.00 in rent, in cash, for June.

The Tenant stated that the Landlord sometimes gave her a receipt for rent when it was paid in cash, but often he did not. She stated that the Landlord did not provide her with a receipt for the \$200.00 in rent that was paid on May 22, 2013. The Landlord stated that he always provided the Tenant with receipts and that a receipt was not provided for the alleged \$200.00 payment, because the payment was not made.

The Tenant stated that she has not lived in the rental unit since June 02, 2013 and that she last had access to the rental unit on June 28, 2013. The Landlord initially stated that the Tenant vacated the rental unit on June 28, 2013. At a later point in the hearing he stated that she lived in the rental unit until July 03, 2013.

The Landlord and the Tenant agree that this tenancy was the subject of a dispute resolution proceeding on June 03, 2013, at which time an Order of Possession was granted to the Landlord. Neither the Landlord nor the Tenant can recall when the Order of Possession required the Tenant to vacate the rental unit.

The Landlord initially stated that he personally served the Order of Possession to the Tenant on June 07, 2013. He subsequently stated that he served the Order of

Possession to the Tenant on June 03, 2013, in the company of two police officers. The Landlord stated that he changed the locks to the rental unit on June 06, 2013.

The Landlord stated that on June 07, 2013 he obtained a Writ of Possession from the Supreme Court of British Columbia.

The Tenant stated that she was in the hospital between June 02, 2013 and June 07, 2013. She stated that she returned to the rental unit on June 07, 2013, at which time she noticed a sign on the door that advised her she had been locked out of the unit. She stated that her key to the unit did not work on June 07, 2013. She stated that the Landlord served her with an Order of Possession on June 07, 2013 and that an Order of Possession was not served to her on June 03, 2013.

The Tenant stated that she attempted to recover her property on several occasions between June 07, 2013 and June 25, 2013, but the Landlord refused to provide her with access to the rental unit. She stated that she attended the unit on four occasions with the police and that they would not provide her access to the unit, as the Landlord produced the Order of Possession on each occasion. The Landlord stated that he would have provided her with access to the rental unit between June 07, 2013 and June 25, 2013, however she did not ask.

The Tenant stated that she eventually contacted a lawyer in an attempt to recover her personal property. The Landlord and the Tenant agree that the Supreme Court of British Columbia granted the Tenant permission to access the rental unit between June 25, 2013 and June 28, 2013, for the purposes of removing her personal possessions.

The Landlord and the Tenant agree that the Landlord provided the Tenant's lawyer with a key to the rental unit on June 25, 2013. She stated that some of her personal property was removed from the unit on June 28, 2013. She stated that she left the rental unit at 1:00 p.m. on June 28, 2013 and when she returned at 3:00 p.m. on June 28, 2013, the locks had been changed. She stated she made several attempts to telephone the Landlord after that time but he would not answer the phone.

The Landlord stated that the keys were not returned to him after June 25, 2013; that the Tenant had access to the rental unit until July 03, 2013; and that he believes she continued to live in the rental unit until July 03, 2013. He stated that on July 04, 2013 he determined she was not inside the rental unit, although some of her property was inside the unit, so he changed the locks.

The Landlord and the Tenant agree that this tenancy was again the subject of a dispute resolution proceeding on July 11, 2013. Residential Tenancy Branch records show that during this hearing the Landlord agreed that he took possession of some of the Tenant's personal belongings and that the Landlord and the Tenant agreed to meet at the rental unit at 5:00 p.m. on July 11, 2013, at which time the Tenant would be permitted to remove her personal property from the rental unit.

The Tenant stated that she did meet with the Landlord on July 11, 2013 at 5:00 p.m., at which time she saw that all of her property had been removed from the rental unit, with the exception of her bed, which had been broken into pieces. The Landlord stated that he did not meet with the Tenant on July 11, 2013 because he had no reason to meet with her. He stated that he does not recall agreeing to meet with her at that date and time.

The Tenant stated that she had to discard approximately \$150.00 worth of food when she gained access to the rental unit on June 25, 2013, as it was no longer edible.

The Tenant estimated that the bed which was broken into pieces by the Landlord was worth \$200.00. The Landlord stated that he discarded the bed on October 29, 2013 and that he does not know the value of the bed.

The Tenant stated that she left approximately 70 pieces of clothing/shoes in the rental unit, which she estimates were worth \$2,000.00; an exercise bicycle, which she estimates was worth \$100.00; and a duvet, which she estimates was worth \$150.00. The Landlord stated that he discarded the exercise bicycle, the duvet, and several items of clothing on October 29, 2013, and that he does not know the value of the items.

The Tenant stated that she left mirror in the rental unit, which she purchased for \$100.00. The Landlord stated that he cannot recall discarding a mirror.

The Tenant stated that when she returned to the rental unit on July 07, 2013 or July 08, 2013, she saw her memory foam mattress in the garbage. The Landlord stated that he does not recall discarding this item in July of 2013.

The Tenant stated that she left her birth certificate in the rental unit, which she estimates will cost \$45.00 to replace. The Landlord stated that he does not recall finding a birth certificate.

The Tenant stated that she left an entire box of family photographs in the rental unit, including family photographs and photographs of her daughter when she was young. The Landlord stated that he does not recall disposing of photographs.

The Tenant stated that she left a digital wireless gateway terminal (serial #248603893); a digital phone terminal (serial #987BN5457453827), and a digital cable terminal (serial number M112250TD3078), which she estimates are worth \$535.00. The Landlord stated that he located several digital boxes in the rental unit, which he still has in his possession.

The Tenant did not submit any receipts to support her estimated values of her lost property.

The Landlord and the Tenant agree that the Tenant did not authorize the Landlord to retain the security deposit; that the Landlord did not return any portion of the security

deposit; and that the Landlord did not file an Application for Dispute Resolution claiming against the security deposit.

The Tenant stated that she mailed three letters to the Landlord: on July 15, 2013, August 22, 2013, and January 16, 2014. She stated on each occasion she provided the Landlord with her forwarding address. The Landlord stated that he did not get a forwarding address for the Tenant until he received the Application for Dispute Resolution in February of 2014.

Analysis:

On the basis of the undisputed evidence, I find that the Landlord was granted an Order of Possession on June 03, 2013. Residential Tenancy Branch records show that this Order of Possession is effective two days after it is served upon the Tenant.

I find that the Order of Possession was served to the Tenant on June 07, 2013, as stated by the Tenant. I find her evidence in this regard to be more reliable than the testimony of the Landlord, because the Landlord provided conflicting evidence. He initially stated it was served on June 07, 2013 and he later stated that he actually served it on June 03, 2013.

The Order of Possession that was issued on June 03, 2013 and served on June 07, 2013 would require the Tenant to vacate the rental unit by June 09, 2013.

A landlord cannot change the locks to a rental unit or seize a tenant's property even if a tenant does not vacate the rental unit in accordance with an Order of Possession that has been served to a tenant, unless there is evidence that the tenant abandoned the property or the Supreme Court of British Columbia has issued the landlord a Writ of Possession that gives the Sheriff or a bailiff authority to return possession of the property to the Landlord.

Given that the Tenant some rent had been paid for June of 2013 and the Tenant had personal possessions in the rental unit on June 06, 2013, I find it unreasonable for the Landlord to conclude that the rental unit had been abandoned by June 06, 2013. On the basis of the testimony of the Landlord, I find that he was not granted a Writ of Possession until June 07, 2013. I therefore find that the Landlord contravened sections 26(3) and 31 of the *Residential Tenancy Act (Act)* when he changed the locks to the rental unit on June 06, 2013.

When making a claim for damages under a tenancy agreement or the *Act*, the party making the claim has the burden of proving their claim. Proving a claim in damages includes establishing that a damage or loss occurred; that the damage or loss was the result of a breach of the tenancy agreement or *Act*; establishing the amount of the loss or damage; and establishing that the party claiming damages took reasonable steps to mitigate their loss.

I find that the Landlord must compensate the Tenant for the food that spoiled after she was locked out of the rental unit on June 06, 2013. In addition to establishing that the Landlord breached section 31 of the *Act*, the Tenant must also accurately establish the cost of the spoiled food. In these circumstances, I find that the Tenant failed to establish the true cost of replacing the food. In reaching this conclusion, I was strongly influenced by the absence of any documentary evidence that corroborates the estimated value of the food or a list of the spoiled food. In an attempt to provide some compensation for her loss, I award nominal damages of \$100.00.

I find that the Landlord's decision to change the locks on June 06, 2013 prevented the Tenant from living in the rental unit for the majority of the month and I therefore find that she is only obligated to pay rent for the period between June 01, 2013 and June 06, 2013, in the amount of \$139.98. The undisputed evidence is that at least \$500.00 in rent was paid for June of 2013. After deducting the \$139.98 that the Tenant owes for June, I find that the Landlord must return the remaining \$360.02 that was paid.

I find that the Tenant has submitted insufficient evidence to show that she paid \$200.00 in rent for June on May 22, 2013. In reaching this conclusion I was influenced by the absence of evidence that corroborates her testimony it was paid or that refutes the Landlord's testimony that it was not paid. In circumstances where a tenant is claiming a rent refund, the burden of proving the rent was paid rests with the tenant, and in these circumstances the Tenant has failed to meet that burden. As the Tenant has not established that more than \$500.00 was paid in rent for June, the rent refund is based on a payment of \$500.00.

I favour the Tenant's testimony that she made several attempts to recover her personal property between June 07, 2013 and June 24, 2013 over the Landlord's testimony that the Tenant made no attempt to recover her personal property between June 07, 2013 and June 24, 2013. Given that the Tenant solicited the assistance of a lawyer to gain access to the rental unit and she filed two Applications for Dispute Resolution seeking to recover her property, I find it extremely unlikely that she would not approach the Landlord to recover her property prior to taking those formal measures.

On the basis of the undisputed evidence, I find that the Supreme Court of British Columbia granted the Tenant the right to access the rental unit, for the purposes of removing her personal possessions, between June 25, 2013 and June 28, 2013.

I favour the Tenant's testimony that the Landlord changed the locks for a second time at 3:00 p.m. on June 28, 2013 over the Landlord's testimony that he did not change the locks again until July 04, 2013. I also favour the Tenant's evidence that she met with the Landlord on July 11, 2013 and determined that most of her property had been removed from the rental unit over the testimony of the Landlord, who stated that he did not meet with the Tenant on July 11, 2013. Given that the Tenant was still making a concerted effort to recover her property on July 11, 2013, I find it difficult to believe that she would not have removed all of her property by July 03, 2013 if she still had access to the rental unit.

In determining this matter, I find that the Landlord was not a credible witness. I find it difficult, if not impossible, to believe that he would have forgotten to meet with the Tenant at 5:00 p.m. July 11, 2013 after having a dispute resolution hearing earlier that same day, at which time he agreed to meet.

When I consider these circumstances in their totality, I find that the Landlord was making a deliberate effort to thwart the Tenant's attempts to recover her property. I find that the Landlord's actions breached section 26(3)(a) of the *Act* and that the Tenant is entitled to compensation for that breach. On the basis of the undisputed evidence, I find that the Tenant numerous personal items in the rental unit, and that she is entitled to compensation for replacing those items.

In addition to establishing that the Landlord's actions interfered with her ability to recover her personal property, the Tenant must also accurately establish the cost of replacing her personal property. In these circumstances, I find that the Tenant failed to establish the true cost of replacing her personal property. In reaching this conclusion, I was strongly influenced by the absence of any documentary evidence that corroborates the estimated value of these used items. In the absence of proof of the value of her lost items, I award nominal damages of \$500.00, which is intended to acknowledge that the Tenant's rights were violated.

I find that the Tenant is entitled to \$1,000.00 in compensation for her lost photographs. Although photographs have limited market value, I find that old family photographs and photographs of the Tenant's daughter as a child have great sentimental value to the Tenant and that she should be suitably compensated for their loss.

As the Landlord acknowledged that he still has the digital boxes the Tenant left in the rental unit, I hereby order the Landlord to return those items to the Tenant, **by registered mail**, by June 30, 2013. Specifically, he must return the digital wireless gateway terminal (serial #248603893); a digital phone terminal (serial #987BN5457453827), and a digital cable terminal (serial number M112250TD3078), and any other electronic devices he has in his possession that he removed from her rental unit.

In the event the Landlord does not return these electronic devices by June 30, 2013, the Tenant has the right to file another Application for Dispute Resolution seeking financial compensation for the items. The Tenant is strongly encouraged to provide proof of the value of these items if they are the subject of a future dispute resolution proceeding.

Section 38(1) of the *Act* stipulates that within 15 days after the later of the date the tenancy ends and the date the landlord receives the tenant's forwarding address in writing, the landlord must either repay the security deposit and/or pet damage deposit or make an application for dispute resolution claiming against the deposits.

Even if I favoured the Landlord's testimony that the rental unit was occupied until July

03, 2013 over the Tenant's testimony that she did not have access to the rental unit after June 28, 2013 and even if I accepted the Landlord's testimony that he did not receive the Tenant's forwarding address until he received the Application for Dispute Resolution "sometime" in February of 2014, I would find that the Landlord failed to comply with section 38(1) of the *Act*.

In the event this tenancy ended on July 03, 2013 and the Landlord received the Application for Dispute Resolution on February 28, 2014, which included the Tenant's forwarding address, the Landlord would have had to either repay the security deposit or file an Application for Dispute Resolution by March 15, 2014. As the Landlord has not repaid the security deposit or filed an Application for Dispute Resolution, I find that he has failed to comply with section 38(1) of the *Act*.

Section 38(6) of the *Act* stipulates that if a landlord does not comply with subsection 38(1) of the *Act*, the Landlord must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable. As I have found that the Landlord did not comply with section 38(1) of the *Act*, I find that the Landlord must pay the Tenant double the security deposit that was paid, plus any interest due on the original amount.

Conclusion:

The Tenant has established a monetary claim of \$2,660.02, which is comprised of double the security deposit, a rent refund of \$360.02, \$1,000.00 in compensation for lost photographs, and nominal damages of \$600.00. I grant the Tenant a monetary Order for \$2,660.02. In the event that the Landlord does not voluntarily comply with this Order, it may be filed with the Province of British Columbia Small Claims Court 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: June 16, 2014

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Residential Tenancy Branch



