



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding MOZA HOLDINGS LIMITED INC  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNDC MNSD RPP FF

### Introduction

This hearing dealt with an Application for Dispute Resolution filed on May 16, 2014, by the Tenant to obtain a Monetary Order for: money owed or compensation for damage or loss under the Act, regulation or tenancy agreement; for the return of double the security deposit; for the return of the Tenant's personal property; and to recover the cost of the filing fee from the Landlord for this application.

The hearing was conducted via teleconference and was attended by the Landlord and the Tenant. Each party gave affirmed testimony and confirmed receipt of evidence served by the other. The Tenant argued that she had not received all of the Landlord's evidence, and upon further clarification she confirmed she had received documents that had been copied on both sides but was still missing some of the pages. The pages of evidence which the Tenant had not received from the Landlord were not relevant to the Tenant's application and therefore, I proceeded with the hearing, without consideration to the missing documents served by the Landlord.

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 relevant evidence orally. 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 parties disputed whether they had entered into a written tenancy agreement. The Tenant argued she had signed a tenancy document while the Landlord argued it was a verbal tenancy agreement.

It was undisputed that the Tenant had occupied the rental unit as of December 31, 2013, and began paying rent effective January 1, 2014, in the amount of \$840.00 which was payable on the first of each month. On or around December 31, 2013 the Tenant paid \$420.00 as the security deposit. No condition inspection report form was completed at move in. The Landlord signed a partially completed move out inspection after conducting a walk through with the Tenant on April 30, 2014. The Tenant provided the Landlord with her forwarding address during the walk through on April 30, 2014.

The Tenant testified that after having to deal with the Landlord's abusive management she sent the Landlord a text message on April 3, 2014 advising the Landlord she would be vacating her rental unit by May 1, 2014. The Tenant argued that the Landlord began to harass her so she had to move out of the unit in a "rush" on April 30, 2014, which caused her to leave her water filter container in the fridge and a special keepsake wooden box containing personal photos that was left in a "secret hidden" cupboard above the hall closet. She is seeking an Order to have those possessions returned or in absence of the possessions she is seeking monetary compensation of \$34.99 for the water container plus \$300.00 for hr keepsake box and photos.

The Tenant submitted that the move out inspection was so confrontational that she handed over her key ring to the Landlord but did not realize at that time the key ring had contained her private mailbox key, in addition to the rental unit keys. She argued that she sent two text messages to the Landlord asking for the return of her mail key and her personal possessions; however, the Landlord ignored her messages and did not respond. The Tenant submitted that because the Landlord refused to return her key she was forced to have her mailbox rekeyed. She is seeking to recover the cost of the rekeying of her personal mailbox of \$15.75, as per the receipt provided in her evidence, plus \$300.00 in lost wages which resulted in her having to take two days off of work to deal with Canada Post in getting access to her private mailbox.

The Tenant argued that she did not give the Landlord permission to keep her security deposit and noted that she had provided her forwarding address to the Landlord as required. Therefore, she was seeking double the return of her security deposit.

The Landlord testified that he did not have the Tenant's written permission to keep the security deposit, he has not returned it, and he has not made application to keep the deposit.

The Landlord pointed to his evidence, which included some transcribed messages, and stated that he had received only one text message from the Tenant regarding her mail key. The Landlord said he did not respond to this message because he did not understand it and he felt the message was "offensive". He argued that he never

received text messages about the Tenant's water container or her personal keepsake box.

The Landlord submitted that he had painters repaint the unit, once the Tenant moved out and they did not inform him of any personal possessions that had been left in the unit. The Landlord noted that the fridge had been turned off, pending the unit being re-rented, and that they did not see a water container inside the fridge at that time. The Landlord stated that the rental unit has since been re-rented under two separate tenancies since the Tenant vacated and neither tenant told the Landlord that they had found the keepsake box.

After further clarification from the Tenant of where her keepsake box had been previously stored, the Landlord agreed to meet at the rental unit with the Tenant to give her the opportunity to search that area for her keepsake box, but the Tenant refused due to their adversarial relationship.

Based on the foregoing, I issued the following Oral Orders:

The Landlord was ordered to give his current tenant proper notice of entry, for as soon as possible, for the Landlord to enter and inspect the rental unit cupboard, as described by the Tenant as the secret or hidden cupboard, to determine if the Tenant's keepsake box was still inside. The Landlord was further ordered to send the Tenant a text message immediately following his inspection to advise her if he had found her keepsake box.

The Tenant was ordered to respond immediately to the Landlord's text message acknowledging receipt of the message. The Tenant was further ordered to make arrangements with the Landlord to pick up the box, if the keepsake box was found.

### 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, and in absence of a written tenancy agreement, I find that the undisputed terms of this tenancy agreement are recognized and enforceable under the *Residential Tenancy Act*.

Upon review of the Tenant's claim of \$15.75 to rekey her mailbox key, I accept the undisputed evidence that the Landlord made a conscious decision not to reply to the Tenant's request for the return of her mail key.

When conducting business as a landlord the Landlord has the obligation to communicate with all tenants, present or former, with respect to a tenant's personal possessions that may be left behind. Accordingly, I find the Tenant has met the burden of proof to establish her claim to rekey her personal mailbox in the amount of **\$15.75**, pursuant to section 62 of the Act.

The undisputed evidence was that the tenancy ended April 30, 2014 and that the Tenant provided the Landlord with her forwarding address on April 30, 2014.

Section 38(1) of the *Act* stipulates that if within 15 days after the later of: 1) the date the tenancy ends, and 2) the date the landlord receives the tenant's forwarding address in writing, the landlord must repay the security deposit, to the tenant with interest or make application for dispute resolution claiming against the security deposit.

In this case the Landlord was required to return the Tenant's security deposit in full or file for dispute resolution no later than May 15, 2014. The Landlord did neither.

Based on the above, I find that the Landlord has failed to comply with Section 38(1) of the *Act* and that the Landlord is now subject to Section 38(6) of the *Act* which states that if a landlord fails to comply with section 38(1) the landlord may not make a claim against the security and pet deposit and the landlord must pay the tenant double the security deposit.

Based on the aforementioned I find the Tenant has met the burden of proof to establish her claim and I award her double his security deposit plus interest in the amount of **\$840.00** (2 x \$420.00 + \$0.00 interest).

Upon review of the Tenant's monetary claim of \$34.99 for the water container and \$300.00 for lost wages, and in the absence of documentary evidence to prove the actual amount of loss, I find there to be insufficient evidence to proof these items claimed, and the claims are hereby dismissed, without leave to reapply.

In regards to registered mail fees and \$10.75 for a title search for bringing this application forward, I find that the Tenant has chosen to incur these costs that cannot be assumed by the Landlord. The dispute resolution process allows an Applicant to claim for compensation or loss as the result of a breach of Act. Costs incurred due to a service method choice or property search are not a breach of the Act. Therefore, I find that the Tenant may not claim mail costs, as they are costs which are not denominated, or named, by the *Residential Tenancy Act*. Accordingly, these amounts claimed, are dismissed, without leave to reapply.

In response to the Tenant's claim of \$300.00 or her request for the return of her personal keepsake box and pictures, and as noted above, the parties were issued Oral

Orders during the hearing. If the Landlord fails to comply with the order to inspect the rental unit in search of the Tenant's keepsake box and to advise the Tenant of the outcome immediately, via text message, then the Tenant is at liberty to file another application for monetary compensation.

The Tenant has partially succeeded with their application; therefore, I award partial recovery of the filing fee in the amount of **\$35.00**.

### Conclusion

The Tenant has been awarded a Monetary Order for **\$890.75** (\$15.75 + \$840.00 + \$35.00). This Order is legally binding and must be served upon the Tenant. In the event that the Tenant does not 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: September 22, 2014

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Residential Tenancy Branch

