



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDC, MNSD, RPP

### Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- authorization to obtain a return of all or a portion of her security deposit pursuant to section 38; and
- an order requiring the landlord to return the tenant's personal property pursuant to section 65.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, and to make submissions. The landlord confirmed that he had not made any applications that were before me.

### Issues to be Decided

Is the tenant entitled to a monetary award for damage or loss under the *Act*?

Is the tenant entitled to a monetary award in the amount of the security deposit or an amount double the value of his security deposit as a result of the landlord's failure to comply with the provisions of section 38 of the *Act*?

Is the tenant entitled to an order requiring the landlord to return the tenant's property?

### Background and Evidence

This month to month tenancy began on November 1, 2014. The rental amount was set at \$1,000.00 and the tenant paid a security deposit of \$500.00 on October 13, 2014. The landlord continues to hold that \$500.00 security deposit. The written tenancy agreement, provided by the landlord indicated two tenants would reside in the rental unit; tenant Z and tenant L, her granddaughter.

Both parties testified that Tenant Z had hoped to have her son move in when she first applied for this rental unit. Before taking a security deposit from the tenant, the landlord informed Tenant Z that her son would not be permitted to reside on the premises. The security deposit was then provided to the landlord and the rental agreement was signed. The landlord agreed to allow Tenant Z to move her property and her granddaughter into the rental unit before November 1, 2014. The landlord testified that Tenant Z did not move in but her son did.

The landlord testified that he was informed, by another occupant, that a male was residing in the rental unit, coming and going through the window. The landlord testified that he attended the residential premises at the start of November and discovered discarded needles, a burning candle and pills on the floor of the rental unit. Tenant Z's property had been moved in but Tenant Z was not on site. Tenant Z attended to the rental unit this same day and was informed by the landlord that he had changed the locks and did not wish to have her reside in the unit.

Tenant Z ("the tenant") never resided in the rental unit but her possessions remained in the unit until November 28, 2014. The tenant has applied for a monetary award returning her security deposit, her November rent and to receive compensation for items not returned by the landlord. She testified that she provided a forwarding address to the landlord on November 9, 2014 but she has never received her security deposit or notice of a claim against her security deposit. She also testified that she is missing several items from the rental unit. She applied to have the landlord either return them or pay for them to be replaced.

The landlord testified that items were taken from the rental unit on two occasions; once, Tenant L came to the rental unit and took items from the property. On November 28, 2014, both parties testified that Tenant Z attended the property and took the remaining items. The undisputed testimony of the landlord is that no items were left behind and that, at no point, did he move the property of either tenant. He testified that no one took any items from the rental unit during the month of November but the two tenants.

The landlord and the tenant both testified that the son resided within the rental unit before November 1, 2014. The tenant testified that the son was cleaning the place as it was very dirty when they first rented it. The landlord testified that the son caused a significant amount of damage to the rental unit. Based on the damage by the son, the landlord chose to retain the tenant's security deposit. Both parties testified that no agreement was made between the tenant and landlord to retain the security deposit. In fact, the tenant provided her forwarding address and requested the return of her deposit several times, according to her testimony.

### Analysis

Section 38(1) of the *Act* requires a landlord, within 15 days of the end of the tenancy or the date on which the landlord receives the tenant's forwarding address in writing, to either return the security deposit in full or file an Application for Dispute Resolution seeking an Order allowing the landlord to retain the deposit. If the landlord fails to comply with section 38(1), then the landlord may not make a claim against the deposit, and the landlord must return the tenant's security deposit plus applicable interest. Furthermore, if the landlord fails to comply with section 38(1), the landlord must pay the tenant a monetary award equivalent to the original value of the security deposit (section 38(6) of the *Act*).

With respect to the return of the security deposit, the triggering event is the latter of the end of the tenancy or the tenant's provision of the forwarding address. The tenant provided undisputed testimony that her forwarding address was provided on November 9, 2014. The landlord had 15 days to take action after November 9, 2014, either returning the deposit in full or making a claim against the deposit. Based on the evidence and the relevant provisions of the *Residential Tenancy Act*, the landlord cannot retain the tenant's deposit since he had not complied with the requirements to agree in writing or file for dispute resolution to notify the tenant of a claim against that deposit. I grant the tenant's application for the return of the security deposit in this case.

The following provisions of Policy Guideline 17 of the Residential Tenancy Branch's Policy Guidelines would seem to be of relevance to the consideration of this application:

Unless the tenant has specifically waived the doubling of the deposit, either on an application for the return of the deposit or at the hearing, the arbitrator will order the return of double the deposit:

- If the landlord has not filed a claim against the deposit within 15 days of the later of the end of the tenancy or the date the tenant's forwarding address is received in writing; ...
- Whether or not the landlord may have a valid monetary claim.

I find that the landlord has neither applied for dispute resolution nor returned the tenant's security deposit in full within the required 15 days. The tenant's undisputed testimony is that she did not agree that the landlord could retain her deposit. The tenant has not explicitly waived her right to obtain an award in double the amount of her deposit pursuant to section 38 of the *Act*. Under these circumstances and in accordance with section 38(6) of the *Act*, I find that the tenant is therefore entitled to a

monetary order amounting to double the value of her security deposit with interest calculated on the original amount only. No interest is payable in this case.

Section 16 of the *Residential Tenancy Act* states that the “rights and obligations of a landlord and tenant under a tenancy agreement take effect from the date the tenancy agreement is entered into, whether or not the tenant ever occupies the rental unit.” A tenancy agreement had been signed, a security deposit had been provided and a tenancy had begun in this circumstance. The *Act* also states that a landlord must not unreasonably restrict access to the residential property by the tenant of a rental unit that is part of that residential property.

One fundamental aspect of the rights of a tenant are provided in section 31 of the *Act*,  
**Prohibitions on changes to locks and other access**

**31** (1) A landlord must not change locks or other means that give access to residential property unless the landlord provides each tenant with new keys or other means that give access to the residential property.

(1.1) A landlord must not change locks or other means of access to a rental unit unless

(a) the tenant agrees to the change, and

(b) the landlord provides the tenant with new keys or other means of access to the rental unit...

I find that, while the tenants continued to store their belongings at the rental unit for most of November, they had little choice but to do so. They were prevented from accessing or residing in the rental unit because the landlord changed the locks and effectively failed to honour the tenancy agreement, ending the tenancy on or about November 1, 2014 with no prior notice to the tenants or formal application to the Residential Tenancy Branch with respect to ending this tenancy.

According to Residential Tenancy Regulation No. 30, the landlord is obliged to exercise reasonable care and caution required by the nature of the property and the circumstances to ensure that the property does not deteriorate and is not damaged, lost or stolen as a result of an inappropriate method of removal or an unsuitable place of storage. I find the landlord met this obligation. I accept his testimony that he did not move, touch or dispose of any of the tenant’s property.

Furthermore, under Residential Tenancy Regulation No. 26, if a tenant claims that their property has been disposed of before they are able to return to the property, the tenant must reimburse the landlord for reasonable costs of removing or storing the property.

The landlord did not incur unreasonable costs in removing or storing the tenant's property. It remained within the unit at the tenant's request.

Given that there is no evidence that property was disposed of or removed by the landlord, I dismiss the tenant's application for an order that the landlord return property. On the basis of this lack of evidence with respect to any disposal of the property, I dismiss the tenant's application for a monetary award to replace unreturned property.

However, given that the tenant entered into an agreement, relied on that agreement, moved her possessions in and paid rent for the month of November and given that the landlord changed the locks on or about November 1, 2014, effectively ending the tenancy in an unauthorized manner, I find that the tenant is entitled to the return of November rent in full.

### Conclusion

The tenant's application for an order that the landlord return property is dismissed. The tenant's application for a monetary award for unreturned property is dismissed. The tenant's application for return of her security deposit and the November rent is granted and I issue a monetary Order in the tenant's favour under the following terms, which includes an award of double the tenant's security deposit,

Item	Amount
Return of Double Security Deposit per section 38 (\$500.00 x 2 = \$1000.00)	\$1000.00
Return of November 2014 rent	\$1000.00
<b>Total Monetary Order</b>	<b>\$2000.00</b>

The tenant is provided with the formal Order in the above terms. Should the landlord(s) fail to comply with these Orders, these Orders may be filed and enforced as Orders of the Provincial Court of British Columbia.

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: January 19, 2015

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Residential Tenancy Branch

