



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Dispute Codes:**

Tenant's application (filed December 17, 2014): MNSD, O; FF

Landlord's application (filed January 5, 2015): MNDC, MNSD, FF

### **Introduction**

This Hearing was convened to consider cross applications. The Tenant filed an Application for Dispute Resolution seeking return of the security deposit; for "other" relief; and to recover the cost of the filing fee from the Landlord.

The Landlord filed an Application for Dispute Resolution seeking compensation for damage or loss under the Act, regulation or tenancy agreement; to keep all or part of the security deposit; and to recover the cost of the filing fee from the Tenant.

The parties gave affirmed testimony at the Hearing.

It was also determined that the Tenant served the Landlord with her Notice of Hearing documents and copies of her documentary evidence by registered mail. The Landlord acknowledged receiving the Tenant's documents.

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### **Issues to be Decided**

1. Is the Landlord entitled to retain a portion of the security deposit in compensation for the cost of cleaning the rental unit at the end of the tenancy, the cost of some propane used by the Tenant but not paid for, and the cost of some firewood that the Tenant took with her or sold at the end of the tenancy?
2. Is the Tenant entitled to return of the security deposit, return of December, 2014's rent and compensation from the Landlord for overpayment of utilities?

## **Background and Evidence**

A copy of the tenancy agreement was provided in evidence. This tenancy began on December 15, 2013. The Tenant paid pro-rated rent for the month of December, 2013, in the amount of \$600.00. Monthly rent was \$1,200.00. The Tenant also paid \$300.00 at the beginning of the tenancy for "wood in the woodshed" and \$400.00 for 60% fill of the propane tank. The Tenant paid a security deposit in the amount of \$600.00 at the beginning of the tenancy. Contrary to the provisions of the Section 26 of the Act, the Landlord also required the Tenant to pay the "first and last" month's rent (\$2,400.00) at the beginning of the tenancy.

The rental property is single family dwelling. The Landlord lives in a different city from the rental property. Her agents, PH and BK, live in the house beside the rental unit.

The Tenant testified that all correspondence with the Landlord was done by e-mail. She stated that on November 21, 2014, the Tenant sent the Landlord an e-mail advising that she was ending the tenancy effective December 31, 2014. The Tenant testified that she also sent the same end-of-tenancy letter, by e-mail, to the Landlord's agent PH on November 24, 2014. The Tenant testified that she also sent a letter, by registered mail, on November 24, 2014, to the Landlord advising that she was ending the tenancy effective December 31, 2014.

The Landlord testified that she returned a portion of the security deposit to the Tenant on January 6, 2014, in the amount of \$487.66, which included \$.66 in "interest". The Tenant acknowledged receiving the partial refund, and stated that she has not yet cashed the cheque. The Landlord is still holding the balance of the security deposit. The Tenant provided the Landlord with her forwarding address on December 1, 2014..

The Tenant testified that the Landlord changed the locks to the rental unit on November 24, 2014. The Tenant stated that she had moved her belongings out of the rental unit on November 21, 2014, and that she told the Landlord the house was empty. The Tenant submitted that she had paid rent for the month of December, 2014, at the beginning of the tenancy and that she is entitled to return of December's rent because the Landlord denied her access by changing the locks.

The Landlord stated that she changed the locks for insurance purposes and security purposes, but that she told the Tenant that she could still access the house because she had left the new keys with her agents, PH and BK.

The parties met at the rental unit on December 30, 2014, to perform a condition inspection. A copy of the Condition Inspection Report was provided in evidence. The

Tenant did not agree with the Landlord's assessment of the condition of the rental unit at the end of the tenancy: "1/2 cord of wood taken from outside of the woodshed (landlord's) - \$90.00. Inside of woodshed was sold to tenant. Home- dirty – 3 hours of cleaning @ \$20.00 - \$60.00". The Tenant returned her keys to the rental unit on December 30, 2014.

The Landlord's agent BK testified that she cleaned the rental unit, which was dirty, and that it took her 5 hours in total. The Landlord stated that she is only seeking to keep \$60.00, as she had agreed on that amount.

The Tenant submitted that the Landlord took away her ability to clean the rental unit at the end of the tenancy by changing the locks. She stated that the appliances were clean but there was some cleaning to finish. The Tenant stated that some of the dirt could have been tracked in from the outside when the Landlord and her agents accessed the rental unit in November to change the locks.

BK testified that the rental unit was empty and the windows were left open on November 19, 2014. She stated that the rental unit was very cold and that the Landlord was concerned that the pipes might burst, so she turned the thermostat up to 60 degrees F.

The Tenant stated that she left the fridge on and set the thermostat to 55 degrees F. She stated that there was a spike in power after the Landlord changed the locks and that she should not be responsible for the overage, which she calculated to be \$32.19.

The Tenant denied that she owes any money for the propane. The Landlord testified that she included a refund of \$47.00 in the refund cheque, for propane that the Tenant paid for.

The Tenant seeks a monetary award, calculated as follows:

Return of rent for December, 2014	\$1,200.00
Return of the security deposit	\$600.00
Overpayment of propane	\$200.00
Excess hydro	<u>\$32.19</u>
	\$2,032.19

The Landlord seeks a monetary award, calculated as follows:

Value of firewood removed by the Tenant	\$90.00
Cost to clean the rental unit	<u>\$60.00</u>
	\$150.00

## **Analysis**

A security deposit is held in a form of trust by the Landlord for the Tenant, to be applied in accordance with the provisions of the Act.

Section 38(1) of the Act provides that (unless a landlord has the tenant's consent to retain a portion of the security deposit) at the end of the tenancy and after receipt of a tenant's forwarding address in writing (whichever is the latter date), **a landlord has 15 days** to either:

1. repay the security deposit in full, together with any accrued interest; or
2. **make an application for dispute resolution claiming against the security deposit.**

Section 38(6) of the Act provides that if a landlord does not comply with Section 38(1) of the Act, the landlord **must** pay the tenant double the amount of the security deposit.

I find that the tenancy ended on December 31, 2014. In this case, the Landlord applied against the security deposit within 15 days of the end of the tenancy and therefore I find that the Tenant is not entitled to compensation under Section 38(6) of the Act. Interest accrues on security deposits in accordance with the provisions of the regulation. No interest has accrued on the security deposit in accordance with those provisions. Therefore, I find that the Landlord returned \$487.66 of the security deposit on January 6, 2015, and that the Landlord is holding the balance of **\$112.34**.

Section 30(1) of the Act provides:

### **Tenant's right of access protected**

**30** (1) A landlord must not unreasonably restrict access to residential property by

- (a) the tenant of a rental unit that is part of the residential property, or
- (b) a person permitted on the residential property by that tenant.

Before an arbitrator can make an Order under section 67 of the Residential Tenancy Act, the applicant must first prove the **existence of damage or loss**; that it stemmed from the other party's **violation of the Act, regulation, or tenancy agreement**; that the **monetary amount of the claim was verified**; and that the **applicant took steps to mitigate or minimize the loss or damage**. When these requirements are not satisfied,

and particularly when the parties' testimonies are at odds, in the absence of other substantive independent evidence the burden of proof is not met.

I find that the Landlord did not provide sufficient evidence of the value of the firewood. Therefore, this portion of the Landlord's claim is **dismissed**.

I find that the Landlord unreasonably restricted the Tenant's access to the rental unit on November 24, 2014, when she changed the locks to the rental unit. However, I find that the Tenant **did not provide sufficient evidence to prove a loss**. The Landlord was entitled to one month's notice under the Act. The Landlord did not benefit financially (for example, she did not re-rent the rental unit for the month of December).

However, I find that by changing the locks to the rental unit the Landlord restricted the Tenant's ability to comply with Section 37(2) of the Act. Therefore, I find that the **Landlord is not entitled to recover the cost of cleaning the rental unit at the end of the tenancy**.

I find that the Tenant did not provide sufficient evidence to support her claim with respect to the amount of propane the Tenant used during the tenancy. She did not provide evidence with respect to how much propane was in the tank at the beginning or the end of the tenancy (for example, a statement from the propane company who filled the tank), or the cost of filling the tank. **This portion of her claim is dismissed**.

I further find that the Tenant did not provide sufficient evidence to support her claim for excess hydro. **This portion of her claim is also dismissed**.

I find that the Tenant is entitled to return of the balance of security deposit in the amount of **\$112.34**. The Tenant may cash the refund cheque in the amount of **\$487.66**.

The Landlord has been unsuccessful in her Application and I find that she is not entitled to recover the cost of the filing fee from the Tenant. I find that the Tenant has been partially successful in her Application and is entitled to recover the cost of the **\$50.00** filing fee.

I find that the Tenant has established a monetary award, calculated as follows:

Return of the balance of the security deposit	\$112.34
Recovery of the filing fee	<u>\$50.00</u>
TOTAL	<b>\$162.34</b>

### **Conclusion**

The Landlord's Application is **dismissed in its entirety**.

I hereby provide the Tenant with a Monetary Order in the amount of **\$162.34** for service upon the Landlord. This Order may be filed in the Provincial Court of British Columbia (Small Claims Court) and enforced as an Order of that Court.

The Tenant may cash the refund cheque in the amount of **\$487.66**.

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: March 30, 2015

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Residential Tenancy Branch

