



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Dispute Codes:**

Tenant's application: MNDC; MNSD

Landlord DM's application: MNR; FF

### **Introduction**

This Hearing was convened to consider cross applications. On September 22, 2014, the Landlord DM filed an Application for Dispute Resolution seeking a monetary award for unpaid rent; and to recover the cost of the filing fee from the Tenant.

On October 7, 2014, the Tenant filed an Application for Dispute Resolution against the Landlord HS seeking compensation for damage or loss under the Act, regulation or tenancy agreement; and return of the security deposit.

The Tenant and her agent gave affirmed testimony at the Hearing.

The Tenant testified that she served the Landlord HS with the Notice of Hearing documents and copies of her documentary evidence by registered mail sent on October 7, 2014, to HS's address. The Tenant provided a copy of the registered mail receipt and tracking number in evidence. I am satisfied that the Landlord HS was served in accordance with the provisions of Section 89 of the Act.

Despite being served with the Notice of Hearing documents, HS did not sign into the Hearing, which remained open for 10 minutes. The Tenant's application proceeded in HS's absence.

The Tenant testified that she received the Landlord DM's application and copies of DM's evidence package, "at some point before" she filed her Application. She stated that she filed against the Landlord HS because all of her dealings were with HS and that she had not had any dealings with DM. DM's documentary evidence identifies DM as HS's mother. DM did not sign into the Hearing, which remained open for 10 minutes. Therefore, I **dismissed DM's application without leave to reapply.**

### **Issues to be Decided**

1. Was there a tenancy agreement between the parties?
2. Is the Tenant entitled to compensation for damage or loss under the Act, regulation or tenancy agreement?
3. Is the Tenant entitled to return of the security deposit?

### **Background and Evidence**

#### The Tenant and her agent gave the following testimony:

The rental unit is a basement suite in a house. The Landlord HS lives in the main suite of the house. On July 14, 2014, the Tenant viewed the rental unit. The Tenant and HS agreed that the tenancy would start on September 1, 2014. Monthly rent was \$750.00. There is no written tenancy agreement with respect to this tenancy. The Tenant gave HS a security deposit in the amount of \$375.00. The Tenant did not receive a receipt for the security deposit.

At the end of August, 2014, the Tenant viewed the rental unit again and noticed that it was not ready for move-in. It was dirty, the painting was not finished, and HS's belongings were still in the rental unit. The door to the rental unit was unlocked and ajar, allowing HS's pets free run of the rental unit. There was a strong odor of pet urine in the carpets, which was not present when the Tenant viewed the rental unit on July 14, 2014. HS told the Tenant that the rental unit would be ready by September 3, 2014.

The Tenant had already given notice to her former landlord and had to move out by August 31, 2014. She placed her possessions in a trailer and parked the trailer in the driveway at the rental property. Some of the Tenant's possessions were also placed on the rental unit's patio and in the shed. The Tenant made arrangements to stay elsewhere until the rental unit was ready on September 3, 2014.

On September 3, 2014, the Tenant went back to rental unit. It remained unlocked, the painting was not finished, and HS's belongings remained in the rental unit.

On September 5, 2014, the Tenant returned to the rental unit. It was still in the same condition as it was on September 3, 2014. The Tenant decided that the rental unit was "looking worse than when first viewed in July" and that she was not going to move in. The Tenant phoned HS and told her that she was not going to move in and that she would be going to the rental unit to remove her belongings.

On the evening of September 5, 2014, the Tenant returned to the rental unit and found that a lock had been placed on the gate. HS advised the Tenant that she would not

remove the lock or allow the Tenant to remove her belongings until the Tenant paid \$750.00 for September's rent.

On September 6, 2014, the Tenant called the police, who spoke to HS and made arrangements for the Tenant to pick up her belongings on September 8, 2014.

On September 8, 2014, the gate was still locked. The Tenant called the police again and was eventually able to retrieve her belongings.

Despite actively searching for a new place to live, the Tenant was unable to find a place for September, 2014. The Tenant paid ET **\$900.00** for "room and board" for the month of September, 2014, and **\$100.00** for "storage of furniture". Copies of receipts were provided in evidence. The Tenant also paid KD **\$100.00** on September 8, 2014, for gas and use of a truck to move her belongings, and paid BK \$20.00 a day for use of the trailer for storage for September 30, 2014 (a total of **\$600.00**). Copies of receipts were provided in evidence.

The Tenant seeks compensation equivalent to double the amount of the security deposit, pursuant to Section 38 of the Act, in the amount of **\$750.00**.

The Tenant also seeks compensation in the amount of \$10.00 a day for a total of **\$300.00** for "pain, suffering and stress".

### **Analysis**

Based on the Tenant's undisputed affirmed testimony, I make the following findings:

#### **Was there a tenancy agreement between the parties?**

The Landlord HS did not prepare a written tenancy agreement, contrary to the provisions of Section 13 of the Act. However, the Act defines "tenancy agreement" as follows:

"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."

I accept the Tenant's undisputed testimony that she provided HS with a security deposit in the amount of \$375.00 on July 14, 2014, and that on July 14, 2014, an oral tenancy agreement was reached effective September 1, 2014.

Is the Tenant entitled to compensation for damage or loss under the Act, regulation or tenancy agreement?

Notwithstanding that the tenancy was to begin on September 1, 2014, I find that the rental unit was not ready for the Tenant to move into on September 1, 2014.

Section 67 of the Act provides me with the authority to determine the amount of compensation, and order a party to pay that compensation to the other party, if damage or loss results from a party not complying with the Act, regulations or tenancy agreement. Based on the Tenant's undisputed testimony, I find that HS breached the oral tenancy agreement and that the Tenant suffered losses as a result of that breach.

The Tenant stated that she paid \$100.00 for gas and use of a truck to move her belongings on September 8, 2014. The Tenant provided a receipt in evidence, signed by KD, with respect to this cost. I find that this is a reasonable amount and I award the Tenant **\$100.00** for this portion of her claim.

Section 7 of the Act requires an applicant to minimize their loss. In this case, the Tenant provided two receipts for storage, signed by two separate individuals, in the total amount of \$700.00 (\$100.00 plus \$600.00). I find that this is an unusually high cost for storage of furniture for one month. The Tenant did not provide evidence of the cost of storing furniture in a local storage outlet, and therefore I find that the Tenant failed to provide sufficient evidence that she minimized her loss with respect to storage fees. However, I recognize that the Tenant was required to store her belongings as a result of the Landlord's breach and therefore I allow this portion of her claim in the nominal amount of **\$50.00**.

The Tenant provided a receipt in the amount of \$900.00 for "room and board" for the month of September, 2014, which means that the Tenant was provided meals as well as a place to live, in shared accommodation. I find that the Tenant would have had to provide her own meals at the rental unit and that a realistic cost for just a "room" would most likely be less than \$750.00. The Tenant did not pay the Landlord rent for the month of September, and therefore I find that she did not provide sufficient evidence of a loss with respect to this portion of her claim. This portion of her claim is dismissed.

The Tenant seeks compensation for pain, suffering and stress in the amount of \$300.00. The Act prohibits a landlord from seizing a tenant's belongings without a court order or complying with the regulations in the event of abandonment. I find that the Landlord breached Section 26(3) of the Act and that the Tenant suffered stress as a result. I further find that the Landlord did not provide the Tenant with the rental unit when the tenancy was to start and that the Tenant suffered stress as a result of the

Landlord`s breach of the tenancy agreement. I allow this portion of the Tenant`s claim in the amount of **\$300.00**.

Is the Tenant entitled to return of the security deposit?

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**, 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.

In this case, I am satisfied that the Landlord received the Tenant`s forwarding address on or before September 22, 2014 (the date that the Landlord filed an Application against the Tenant) because the Landlord used the same address for the Tenant as the forwarding address on her Application. The Landlord did not seek compensation against the security deposit in her Application and therefore I find that the Tenant is entitled to a monetary order for double the amount of the security deposit, in the amount of **\$750.00**.

Total monetary award:

The Tenant has been partially successful in her Application for Dispute Resolution and I find that she is entitled to recover the cost of the **\$50.00** filing fee from the Landlord HS.

I hereby provide the Tenant with a Monetary Order against the Landlord HS, calculated as follows:

Cost to remove belongings on September 8, 2014	\$100.00
Nominal amount for storage costs	\$50.00
Double the security deposit	\$750.00
Compensation for pain and suffering	\$300.00
Recovery of the filing fee	<u>\$50.00</u>
TOTAL	<b>\$1,250.00</b>

**Conclusion**

The Landlord's application is **dismissed without leave to reapply**.

I hereby provide the Tenant with a Monetary Order in the amount of **\$1,250.00** for service upon the Landlord HS. This Order may be filed in the Provincial Court 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: March 10, 2015

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Residential Tenancy Branch

