



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding TESS MENGUES  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNDC, MNSD, OLC, O, FF

### Introduction

This matter dealt with an application by the Tenant for the return of a security deposit, compensation for loss or damage under the Act, regulations or tenancy agreement, for the Landlords to comply with the Act, regulations and tenancy agreement, to recover the filing fee and for other considerations.

The Tenant said he served the Landlords with the Application and Notice of Hearing (the “hearing package”) by registered mail on October 9, 2015. Based on the evidence of the Tenant, I find that the Landlords were served with the Tenant’s hearing package as required by s. 89 of the Act and the hearing proceeded with both parties in attendance.

### Issues(s) to be Decided

1. Is the Tenant entitled to the return of the security deposit?
2. Is the Tenant entitled to compensation for a loss or damage?
3. Has the Landlord complied with the Act, regulations and tenancy agreement?
4. What other considerations are there?

### Background and Evidence

This tenancy started on April 1, 2014 as a month to month tenancy. The tenancy ended September 15, 2015. Rent was \$875.00 per month payable in advance of the 1<sup>st</sup> day of each month. The Tenant paid a security deposit of \$437.50 on March 25, 2014. The Tenant said no condition inspection reports were completed. The Tenant continued to say he gave the Landlord his forwarding address with the application.

The Tenant said that the Landlord sent him a text message on September 4, 2015 that they were selling the rental unit and the Landlord requested him to move out by September 30, 2015. The Tenant said he was out of the country from September 5, 2015 to September 27, 2015 so this made the move very difficult for him. The Tenant said the Landlords and he agreed that the Landlords would pay his moving costs,

compensate him one month's rent and return his security deposit. The Tenant said the Landlords have paid his moving costs, but they have not paid him compensation of 1 month's rent in the amount of \$875.00 and the Landlords have not returned his security deposit of \$437.50.

The Landlords said they thought they had a verbal agreement with the Tenant at the start of the tenancy that if the unit sold he would move out. The Landlords said they understand now that they did not comply with the Act and regulations in ending this tenancy. The Landlords said they are not disputing the Tenants claim.

The Tenant said in closing that he applied for \$2,200.00 but he did not provide any corroborative evidence to support more of the claim except the compensation of one month's rent in the amount of \$875.00 and the return of the security deposit of \$437.50. There are no invoices or paid receipts in the Tenant's application to support any additional claims.

The Landlords said in closing they are not disputing the Tenants claim.

### Analysis

#### **Consequences for tenant and landlord if report requirements not met**

**Section 24 of the Act says** (1) The right of a tenant to the return of a security deposit or a pet damage deposit, or both, is extinguished if

- (a) the landlord has complied with section 23 (3) [2 *opportunities for inspection*], and
- (b) the tenant has not participated on either occasion.

**(2) The right of a landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord**

- (a) does not comply with section 23 (3) [2 *opportunities for inspection*],**
- (b) having complied with section 23 (3), does not participate on either occasion, or**
- (c) does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.**

I find the Landlord did not complete a move in condition inspections report therefore the Landlords' claim on the Tenants security deposit is extinguished. I order the Landlords to return the security deposit of \$437.50 to the Tenant forthwith.

**Section 49 of the Act says** (2) Subject to section 51 [*tenant's compensation: section 49 notice*], a landlord may end a tenancy for a purpose referred to in subsection (3), (4), (5) or (6) by giving notice to end the tenancy effective on a date that must be

- (a) not earlier than 2 months after the date the tenant receives the notice,
- (b) the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement, and
- (c) if the tenancy agreement is a fixed term tenancy agreement, not earlier than the date specified as the end of the tenancy.

(3) A landlord who is an individual may end a tenancy in respect of a rental unit if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit.

(4) A landlord that is a family corporation may end a tenancy in respect of a rental unit if a person owning voting shares in the corporation, or a close family member of that person, intends in good faith to occupy the rental unit.

(5) A landlord may end a tenancy in respect of a rental unit if

**(a) the landlord enters into an agreement in good faith to sell the rental unit,**

(b) all the conditions on which the sale depends have been satisfied, and

(c) the purchaser asks the landlord, in writing, to give notice to end the tenancy on one of the following grounds:

- (i) the purchaser is an individual and the purchaser, or a close family member of the purchaser, intends in good faith to occupy the rental unit;
- (ii) the purchaser is a family corporation and a person owning voting shares in the corporation, or a close family member of that person, intends in good faith to occupy the rental unit.

(6) A landlord may end a tenancy in respect of a rental unit if the landlord has all the necessary permits and approvals required by law, and intends in good faith, to do any of the following:

- (a) demolish the rental unit;
- (b) renovate or repair the rental unit in a manner that requires the rental unit to be vacant;
- (c) convert the residential property to strata lots under the *Strata Property Act*;
- (d) convert the residential property into a not for profit housing cooperative under the *Cooperative Association Act*;
- (e) convert the rental unit for use by a caretaker, manager or superintendent of the residential property;
- (f) convert the rental unit to a non-residential use.

**Section 51 of the Acts says** (1) A tenant who receives a notice to end a tenancy under section 49 [*landlord's use of property*] is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement.

I find the Landlord is obligated under the Act to compensate the Tenant the equivalent of one month's rent when requesting the Tenant to move out for a sale of the property. I order the Landlord to compensate the Tenant \$875.00.

For a monetary claim for damage of loss to be successful an applicant must prove a loss actually exists, prove the loss happened solely because of the actions of the respondent in violation to the Act, the applicant must verify the loss with receipts and the applicant must show how they mitigated or minimized the loss.

The Tenant has not provided any details for a claim larger than the rent and the security deposit; therefore I cannot evaluate the Tenants unsubstantiated claim for \$2,200.00 less the security deposit of \$437.50 and the compensation of \$875.00. The balance of the Tenant's claim of ( $\$2,200.00 - \$1,312.50 = \$887.50$ ) is dismissed.

As the Tenant was partially successful in this matter I further order the Tenant to recover the filing fee of \$50.00 from the Landlords; pursuant to section 67 a monetary order for \$1,362.50 has been issued to the Tenant.

### Conclusion

I find in favour of the Tenant's monetary claim. Pursuant to sections 38, 67 and 72 of the Act, I grant a Monetary Order for \$1,362.50 to the Tenant. The order must be served on the Respondent and is enforceable through the Provincial Court of British Columbia (small claims court) 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: April 19, 2016

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Residential Tenancy Branch