



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNDC, MNSD, FF, O

### Introduction

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

The Tenant said she served the Landlords with the Application and Notice of Hearing (the “hearing package”) by registered mail on January 12, 2016. 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 in the absence of the Landlords.

During the hearing it was discovered the filing fee had been waived for the Tenant so it is withdraw from the application.

### Issues(s) to be Decided

1. Is the Tenant entitled to the return of double the security deposit?
2. Is there a loss or damage to the Tenant and if so how much?
3. Is the Tenant entitled to compensation for the loss or damage and if so how much?
4. What other considerations are there?

### Background and Evidence

This tenancy started on March 1, 2015 as a 5 year fixed term tenancy. Rent was \$500.00 per month payable in advance of the 1<sup>st</sup> day of each month. The Tenant paid a security deposit of \$250.00 on March 1, 2015. No condition inspection reports were completed at the start and end of this tenancy. The Tenant said she gave the Landlord her forwarding address on August 23, 2015 and the tenancy ended on September 15, 2015. The tenancy end as a result of the Landlord issuing a 2 Month Notice to End Tenancy for Landlord’s Use of the Property dated July 27, 2015.

The Tenant said she asked the Landlord for the return of her deposit of \$250.00 on August 23, September 21 and September 30, 2015. The Tenant said at first the Landlord at first did not respond and then on October 22, 2015 she received a letter from the Landlord and a cheque for \$200.00. The letter dated October 5, 2015 said the Landlord was keeping \$50.00 for cleaning. As well the Landlord said they did not charge the Tenant rent for August and September but they could have.

The Tenant said she made an agreement with the female Landlord that the Tenant did not have to pay rent for August, 2016 due to her moving costs. The Tenant continued to say that the area had a wildfire on August 13, 2015 which rendered the rental unit uninhabitable from August 13, 2016 to the time she moved out September 15, 2015. The rental unit had no water and part of the time the unit had no power. As a result the Tenant said she does not owe any rent for August or September, 2015.

The Tenant said she is now applying for double her security deposit of \$250.00 in the amount of \$500.00 less the \$200.00 the Landlord has returned to her. The Tenant requested \$300.00 for the late return of the security deposit.

Further the Tenant is requesting \$500.00 as compensation for the 2 Month Notice to End Tenancy for the Landlord's Use of the Property dated July 27, 2015. The Tenant said the Act says a Tenant must be compensated the equivalent of one month's rent at the end of a tenancy if a Landlord issues a 2 Month Notice to End Tenancy. The compensation the Tenant is requesting is the equivalent of one month's rent in the amount of \$500.00.

In addition the Tenant is requesting to be reimbursed for a hydro bill estimated at \$80.00. The Tenant said the Landlord said he would pay for the March, 2015 hydro bill. The Tenant said she has no corroborative evidence to support this claim as it was just talked about at the start of the tenancy.

The Tenant continued to say that she mentioned a claim for aggravated damages but she wants to drop this claim from the application.

The Tenant said in closing that this was a very trying time because of the wildfire and being evicted by the Landlord, but things have improved for her now at her new residence.

### Analysis

Section 38 (1) says that except as provided in subsection (3) or (4) (a), within 15 days after the later of

(a) the date the tenancy ends, and

(b) the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one of the following:

(c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;

(d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

And Section 38 (6) says if a landlord does not comply with subsection (1), the landlord

(a) may not make a claim against the security deposit or any pet damage deposit, and

(b) **must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.**

I find from that the Tenant did give the Landlord a forwarding address on August 23, 2015 and again in writing on September 23, 2015. The Landlord did not repay security deposit to the Tenant within 15 days of the end of the tenancy or 15 days after receiving the Tenant's forwarding address in writing, nor did the Landlord apply for dispute resolution. Consequently I find for the Tenant and I award the Tenant double the security deposit of \$250.00 in the amount of  $\$250.00 \times 2 = \$500.00$  less the \$200.00 the Landlord has returned on October 22, 2015 in the total amount of \$300.00.

**Section 51** (1) of the Act says 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 accept the Tenant's testimony and evidence that the Landlord agreed not to charge rent for August and September, 2015. This concession was a result of the Tenant's moving costs, because the wild fire made the unit uninhabitable after August 13, 2015 and because the tenancy was a fixed 5 year term tenancy agreement. It was not a result of the Landlord issuing a 2 Month Notice to End Tenancy for Landlord's Use of the Property. Consequently, pursuant to Section 51(1) of the Act the Tenant has established grounds to be awarded the equivalent of one month's rent in the amount of

\$500.00 as compensation for the Landlord issuing a 2 Month Notice to End Tenancy for Landlord's Use of the Property dated July 27, 2015. I award the Tenant \$500.00 as compensation.

With regard to the Tenant's claim for \$80.00 for reimbursement of the hydro costs for March, 2015 I find no corroborative evidence to support this claim therefore the claim for hydro costs of \$80.00 is dismissed without leave to reapply.

Pursuant to section 38 and 67 a monetary order for \$800.00 has been issued to the Tenant. This Monetary order represents double the security deposit less the \$200.00 returned by the Landlord and compensation of \$500.00 to the Tenant for the 2 Month Notice to End Tenancy for Landlord's Use of the Property.

### Conclusion

I find in favour of the Tenant's monetary claim. Pursuant to sections 38 and 67 of the Act, I grant a Monetary Order for \$800.00 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: August 22, 2016

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Residential Tenancy Branch