# Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

## DECISION

**Dispute Codes**:

MNSD, MNDC

**Introduction**

This hearing was convened in response to an application by the tenant for Orders as follows;

1. An Order for the return of the security deposit – Section 38
2. An Order seeking the landlord return personal property – Section 65
3. A monetary Order for damage / loss – Section 67

Both parties attended the hearing and were given opportunity to present all relevant evidence and testimony in respect to the claim and to make relevant prior submission to the hearing and fully participate in the conference call hearing. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present. The landlord acknowledged receiving all of the evidence of the tenant as provided to this hearing. The tenant claims not to have received any evidence from the landlord and the landlord acknowledged they did not send the tenant their evidence as provided to this hearing. As a result the landlord's evidence was deemed inadmissible.

It must be noted that the parties previously both filed cross applications which after 2 hearing dates resulted in the landlord's application being dismissed, and the tenant's application being withdrawn, with leave to reapply. This matter is the tenant's reapplication.

An abundance of oral evidence was presented. Only the evidence relevant to the tenant's claim is reflected in this Decision. The tenant's claim was clarified to be for the return of their deposit and compensation for 4 purportedly missing winter tires, as well as compensation for loss of use of a dryer during the tenancy, all for a total claim of $1050. The tenant further requested for the balance of their $25,000.00 ($23.950.00) claim to be assigned for "mental distress".

**Issue(s) to be Decided**

Is the tenant entitled to the monetary amounts claimed?

**Background and Evidence**

The undisputed relevant facts of the parties before me are as follows. The tenancy started March 05, 2014. The rental unit was shared by two tenants under separate tenancy agreements. Rent for the applicant was $400.00 payable in advance on the 1st. of every month. It is relevant that the rent included the use of laundry facilities. The landlord collected a security deposit of $200.00 at the outset of the tenancy, which the landlord still retains in trust. The tenancy ended pursuant to the tenant giving the landlord a *24 hour Notice to End* for on September 28, 2015 in which event the tenant provided the landlord with a forwarding address in writing, and acknowledged by the landlord to have been received September 30, 2015.

The parties agreed there was no *move in* or *move out* condition inspections conducted at the start and end of the tenancy. The parties agreed that at the end of the applicant's tenancy the rental unit was left occupied by the other tenant in the shared rental unit along with many of the tenant's personal belongings. The tenant seeks return of their security deposit. The landlord claims they retained the majority of the security deposit for purported unpaid rent.

The parties agreed that during the tenancy the dryer of the laundry facilities was not operable. The tenant claims they did not have use of the dryer from May 2016 to the end of September 2015. The landlord claims the dryer was not operable for a period of

time but less than 5 months. The tenant seeks $50.00 per month for loss of use of the dryer.

The tenant claims that they purchased a motor vehicle from the landlord at which time the landlord told the tenant the car came with 4 winter tires. Once the tenancy ended for both parties the tenant learned that the 4 winter tires were not in the garage as claimed by the landlord. The landlord denied that they sold the tenant the tires and has no knowledge of such tires. The tenant claims $400.00 for the purported tires.

The tenant claims that during the tenancy the landlord caused them stress and “a mental breakdown”, causing her to have hives. The tenant claims the stress also had a profound negative effect on their cat. The tenant testified at length about how they were initially close friends with the landlord and some of the other tenants of the landlord, but that ultimately some of the landlord’s actions resulted in a loss of quiet enjoyment and their mental distress. The tenant claims the landlord referred to her as a *drug dealer*, and called her *stupid.* The tenant testified the landlord *harassed* her and that some of the landlord’s actions caused *strife* between her and her co-tenant of the rental unit. The tenant recounted an incident in which they claim to have been hidden from the landlord’s view when they overheard the landlord and another tenant *conspiring against her* with a view to her eviction. In addition, the tenant claims they often indirectly or directly heard another tenant’s profane language and told the landlord about what they heard and that they should evict the other tenant. The tenant testified that as a result of the above and other events they suffered a loss of quiet enjoyment and were compelled to vacate for their own safety. The tenant uttered passages from a guide for tenancies in British Columbia and stated their tenancy experience mirrored the passages. The landlord denied all of the tenant’s allegations.

Lastly, the tenant requests the landlord return all of their other personal property. However, the tenant acknowledges that when they left the rental unit most of their belongings remained with their co-tenant and currently their personal property may be in possession of the landlord’s witness in this matter (DM).

The **tenant** provided witness AS – a friend of the tenant. The witness testified under oath. The witness stated they stopped going to the tenant's rental unit to visit as it was "tense" around the unit. There was considerable "tension" in the tenant's living accommodations. The witness also stated that they had, "caught the landlord in a number of lies". – *end of testimony*

The **tenant** provided witness JA – the tenant's co-tenant in the unit. The witness testified under oath. The witness stated, "it would have been better if the landlord had done what they were supposed to do". The witness did not elaborate on this statement and the tenant was heard prompting the witness. Upon questioning by the applicant, the witness stated that he knew of instances in which the police were called in response to dispute between the landlord and her husband; however the same was not true for the co-tenants in question. The witness stated that after the tenant moved out they were still in possession of many of the tenant's belongings. Before ending their testimony the witness stated the dryer of the rental unit was not available for some months. – *end of testimony*

The landlord provided witness DM – a tenant and friend of the landlord. The witness testified under oath. The witness stated they have known the tenant a long time and over that time the applicant tenant "has changed". The witness stated that in their opinion the tenant took most things personally and has turned their attention to, "going after landlords for all sorts of stuff", and that it has been going on for too long, and that this matter in question and the related process has gone on too long. – *end of testimony*

## Analysis

***The full text of the Act, and other resources, can be accessed via the Residential Tenancy Branch website: www.gov.bc.ca/landlordtenant.***

On preponderance of the relevant evidence in this matter, I have reached a Decision.

I find that the landlord's *right to make a claim against the security deposit* was extinguished because they did not comply with the requirements of **Section 23 and 35***(Condition inspection – start of tenancy / end of tenancy)***.** I also find the tenant provided the landlord with a forwarding address acknowledged by the landlord to have been received September 30, 2016. The landlord filed for dispute resolution in December 2015 which was subsequently dismissed.

I find that **Section 38(1)** of the Act provides as follows **(emphasis mine)**

**38**(1) Except as provided in subsection (3) or (4) (a), **within 15 days after the later of**

38(1)(a) the date the tenancy ends, and

38(1)(b) the date the landlord receives the tenant's forwarding address in writing,

the landlord **must** do one of the following:

38(1)(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;

38(1)(d) file an application for dispute resolution to make a claim against the security deposit or pet damage deposit.

I find the landlord did not file an application within 15 days of receiving the tenant's forwarding address; regardless, found the landlord's *right to make a claim against the security deposit* was extinguished because they did not comply with **Section 23** of the Act*(Condition inspection – start of tenancy)* the landlord was instead obligated to return the deposits within the required time to do so after they received the tenant's forwarding address in writing. The landlord failed to repay the security deposit within the following 15 days and is therefore liable under **Section 38(6)** which states:

**38**(6) If a landlord does not comply with subsection (1), the landlord

38(6)(a) may not make a claim against the security deposit or any pet damage deposit, and

38(6)(b) **must pay the tenant double the amount of the security deposit,** pet damage deposit, or both, as applicable.

The landlord currently holds a security deposit of $200.00 and was obligated under Section 38 to return this amount. The amount which is doubled is the original amount of the deposit. As a result I find the tenant has established an entitlement of **$400.00**.

When making a claim for damages under a tenancy agreement or the Act, the party making the allegations has the burden of proving their claim pursuant to the test established by **Section 7** of the Act, on a balance of probabilities. According to Section 7 of the Act proving a claim in damage or loss requires that it be established that 1). the *damage or loss occurred*, 2). *Proof the damage or loss occurred solely because of the actions or neglect of the Respondent in violation of the Act or agreement,* 3). *verification of the actual loss or damage* claimed, and 4.) *proof that the applicant party took all reasonable measures to mitigate their loss.*

I find that the parties agreed the tenant was entitled to the use of laundry facilities as part of their rent and that the dryer of the rental unit failed and was not made operable again by the landlord again for a period of time. The parties disagree as to the length of time the dryer was unavailable to the tenant, and the tenant has not aptly supported her claim it was unavailable for 5 months. None the less I accept that the tenant suffered a loss of use for a period of time and is owed some compensation as a result. I grant the tenant *nominal compensation* in the amount of **$100.00.**

I find the tenant has not provided sufficient evidence they purchased 4 winter tires from the landlord, which then went missing while on the landlord's property. The tenant has not proven the landlord is responsible for this purported loss, and as a result this portion of the tenant's claim must fail, and is **dismissed.**

In respect to the tenant's request for the return of their personal property, the tenant has not provided that their personal property rests with the landlord and further they have

knowledge of where it may rest and it remains available to them to retrieve it. As a result this portion of their application is **dismissed.**

I have considered the tenant's claim of $23,950.00 for mental distress and loss of quiet enjoyment. It must be known that in this matter the tenant bears the burden of proving their claim for damage or loss. I find the tenant's document evidence does not at all relate to, or support this portion of their claim. I find the tenant's testimony was forthright; and, while I must accept it as their version of how events unfolded, it is noteworthy that it was refuted by the landlord in its entirety. I find the tenant's witnesses provided testimony which was not helpful toward better understanding the tenant's claim for loss of quiet enjoyment. I found the testimony of the witnesses lacked meaningful information relevant to the tenant's claim, or how their submission supported claims of any wrongdoing by the landlord. I accept the tenant's testimony that dispute with their landlord in respect to a variety of issues in this tenancy has been stressful. However, I find the tenant has not established their claim of *harassment*, *loss of quiet enjoyment, or that solely the actions or conduct of the landlord* in the course of this tenancy are at the root of the tenant's mental distress. I find the tenant has not advanced sufficient evidence proving the claim. As a result, I **dismiss** this portion of the tenant's application.

As a result of all the above:

*Calculation for Monetary Order*

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|---|---|
| Return of double security deposit to tenant | $400.00 |
| Loss of use – dryer – nominal compensation | $100.00 |
| **Monetary Award to tenant** | **$500.00** |

**I grant** the tenant a Monetary Order under Section 67 of the Act for the sum of **$500.00**. If necessary, this Order may be filed in the Small Claims Court and enforced as an Order of that Court.

**Conclusion**

The tenant's application, in relevant part, has been granted. The balance of their application has been dismissed.

**This Decision is final and binding on both parties.**

*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: October 04, 2016

Residential Tenancy Branch