



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes            OLC, MNSD, MNDC, FF

### Introduction

This hearing convened as a result of a Tenant's Application for Dispute Resolution wherein the Tenant requested an Order that the Landlord comply with the *Residential Tenancy Act*, the *Residential Tenancy Regulation*, or the tenancy agreement, as well as seeking monetary compensation for return of rent paid, return of the security deposit and recovery of the filing fee.

The hearing was conducted by teleconference on March 8, 2017 and April 24, 2017. Both parties called into the hearing on March 8, 2017 which was adjourned to April 24, 2017 by my Interim Decision of March 17, 2017. This Decision and my Interim Decision must be read in conjunction.

Only the Tenant called into the hearing on April 24, 2017. She gave affirmed testimony and as provided the opportunity to present her evidence orally and in written and documentary form, and to make submissions to me.

The Residential Tenancy Branch records indicate the Notice of Adjourned Hearing and my Interim Decision were mailed to the Landlord on March 22, 2017. I therefore find that the Landlord was provided sufficient notice of the proceeding and I proceeded with the hearing in his absence.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, not all details of the Tenant's submissions and or arguments are reproduced here; further, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Issues

1. Is the Tenant entitled to monetary compensation from the Landlord?
2. What should the happen with the Tenant's security deposit?
3. Should the Tenant recover the filing fee paid?

### Background Evidence

Introduced in evidence was a copy of the Residential Tenancy Agreement signed September 29, 2016 indicating this five month fixed term tenancy was to end February 28, 2017 (the start date was not noted on the agreement). Monthly rent was payable in the amount of \$425.00. The Tenant paid a security deposit in the amount of \$212.50 and a pet damage deposit in the amount of \$87.50 for a total of \$300.00.

The Tenant testified that the Landlord's mother owns the rental building. She confirmed that she shared a kitchen with the Landlord.

The Tenant testified that within two weeks of moving into the rental unit, on October 13, 2016, the Landlord "kicked her out" and told her to be out of the rental home before the end of October 2016. She stated that she asked him why he wanted her to move out and he said "because I say so, this is Canada, this is how we do it, not your freaking Taiwan; if you don't do it, I will throw your stuff on the street". The Tenant stated that she was very afraid of the Landlord and took photos of her room at that time as she was afraid he would dispose of her items. These photos were provided in evidence.

The Tenant further testified that she went to work the next day (October 14, 2016) and decided to stay with her boyfriend as she no longer felt safe in the rental unit. She said that she also spoke to the R.C.M.P. who suggested that she stay somewhere else for her safety. When she went to retrieve a few items from her room she saw a sticky note from the Landlord wherein he wrote that "I'm showing your room tomorrow and maybe again on Tuesday". The Tenant provided a photo of this sticky note in evidence.

The Tenant also provided copies of text communication between the parties as follows:

October 14, 2016

[TENANT] "hi [Landlord's first name], I saw the note you left on my door..you can't show my room to other people without me presence plus my stuff is there and I still live there legally; I know my rights"

[LANDLORD] "Apparently you don't. Read the act. If you continue with your ridiculousness it will end badly for you. I guarantee it. I got pictures, video etc. And if you want to act crazy again I will get the RCMP involved. This isn't Taiwan, you can't act this way in this country."

[TENANT] "yes I do have my rights. You haven't told me what have I done and the things you say about me acting crazy are ridiculous, please prove it. And again, this is not about Taiwan or Canada, it is about doing things right. I know this is Canada so I follow the law...I have already contacted the rcmp, here is the file  
[portion cut off on screen shot]"

Scared. You never told me what I have done or anything I done that bothered you, I wonder how I screwed up?? You do and say whatever you want and you can't treat people like that by being racist and verbally abusive. I don't have to and won't take this shit. You have cops in your family..Great maybe they can enlighten your ignorance”.

October 16, 2016

[LANDLORD] “[Tenant’s first name] you got till 1pm to get the stuff you left in my carport out of there. After that I will assume you don’t want it and toss it. I doubts it’s worth the \$500. And if the bears scattered any of your stuff in the yard I will charge you for clean up, idiot. Left you a letter. Make sure u read it.”

[TENANT] “[Landlord’s first name], I left nothing in your carport, since you already thrown my stuff outside the house; I will go get it by 1pm. Please prepare and return my \$300 deposit and half  
[portion cut off on screen shot]

The Tenant testified that she attended the rental unit on October 16, 2016 and all of her belongings were outside. She stated that at this time she also discovered that her key did not work and although she knocked on the rental unit door, he did not answer.

The Tenant filed a Monetary Order worksheet which confirmed she sought recovery for the following:

|   |                   |
|---|-------------------|
| Security deposit and pet damage deposit | \$300.00          |
| Door hook                               | \$9.05            |
| 3 m hooks                               | \$10.98           |
| Toilet paper                            | \$14.99           |
| Paper towel                             | \$18.69           |
| Return October rent                     | \$425.00          |
| Filing fee                              | \$100.00          |
| Cost of registered mail                 | \$23.89           |
| <b>TOTAL</b>                            | <b>\$1,327.60</b> |

The Tenant testified that on March 22, 2017, the Landlord dropped off a letter to her address. I asked the Tenant to fax a copy of this letter to the branch and confirm that I received and reviewed this letter in making my Decision. In this letter the Landlord demands money by an electronic transfer from the Tenant, accuses her of abandoning the rental unit and failing to give 30 days’ notice to end her tenancy. He also insults her intelligence, her dog, and her English language skills. Finally, he threatens to call the RCMP and charge her with Public Mischief .

The Tenant confirmed that the Landlord failed to make an application to retain her security deposit despite having her forwarding address and being directed to do so by my Interim Decision. Accordingly, she sought return of double her security deposit in accordance with section 38 of the *Act*.

The Tenant also testified that as she was denied entry to the rental unit, she was not able to retrieve some of the items she had purchased when she moved in, including a door hook which she stated cost \$9.05, 3m hooks she purchased for \$10.98, toilet paper she purchased for \$14.99 and paper towel she purchased for \$18.69. She sought compensation for the value of these items as noted on her monetary orders worksheet.

### Analysis

After consideration of the undisputed evidence and testimony of the Tenant and on a probabilities, I find as follows.

I will first deal with the Tenant's request for return of double the security and pet damage deposit paid. Section 38 of the *Residential Tenancy Act* provides as follows:

#### **Return of security deposit and pet damage deposit**

**38** (1) 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.

(2) Subsection (1) does not apply if the tenant's right to the return of a security deposit or a pet damage deposit has been extinguished under section 24

(1) [*tenant fails to participate in start of tenancy inspection*] or 36 (1) [*tenant fails to participate in end of tenancy inspection*].

(3) A landlord may retain from a security deposit or a pet damage deposit an amount that

- (a) the director has previously ordered the tenant to pay to the landlord, and
- (b) at the end of the tenancy remains unpaid.

(4) A landlord may retain an amount from a security deposit or a pet damage deposit if,

- (a) at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant, or

(b) after the end of the tenancy, the director orders that the landlord may retain the amount.

(5) The right of a landlord to retain all or part of a security deposit or pet damage deposit under subsection (4) (a) does not apply if the liability of the tenant is in relation to damage and the landlord's right to claim for damage against a security deposit or a pet damage deposit has been extinguished under section 24 (2) [*landlord failure to meet start of tenancy condition report requirements*] or 36 (2) [*landlord failure to meet end of tenancy condition report requirements*].

(6) 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 accept the Tenant undisputed evidence that she did not agree to the Landlord retaining any portion of their security and pet damage deposit.

As noted in my Interim Decision of March 17, 2017 the Landlord was informed of the Tenant's forwarding address during the hearing on March 8, 2017, and was given 15 days from the date of receipt of the Decision to return the Tenant's security and pet damage deposit or make an application for its retention. Branch records indicate the Interim Decision was mailed to the Landlord on March 22, 2017. Section 90 of the *Residential Tenancy Act* provides that documents are deemed received five days after mailing. Therefore, I find the Landlord received my Decision as of March 27, 2017 and therefore had until April 11, 2017 in which to return to the funds or make his application. I accept the Tenant's evidence that he did not return the funds and did not make such an application.

The security and pet damage deposit are held in trust for the Tenant by the Landlord. The Landlord may only keep all or a portion of the security and pet damage deposit through the authority of the *Act*, such as the written agreement of the Tenant an Order from an Arbitrator. If the Landlord believes he is entitled to monetary compensation from the Tenant, he must either obtain the Tenant's consent to such deductions, or obtain an Order from an Arbitrator authorizing them to retain a portion of the Tenant's security and pet damage deposit. Here the Landlord did not have any authority under the *Act* to keep any portion of the security and pet damage deposit.

Having made the above findings, I must Order, pursuant to section 38 and 67 of the *Act*, that the Landlords pay the Tenant the sum of **\$600.00**, comprised of double the security and pet damage deposit.

I accept the Tenant's evidence that the Landlord denied her access to the rental unit and therefore prevented her from retrieving all her belongings, including various hooks and paper

products. In doing so, the Landlord has breached sections 30 and 31 of the *Act* which read as follows:

**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.
- (2) A landlord must not unreasonably restrict access to residential property by
- (a) a candidate seeking election to the Parliament of Canada, the Legislative Assembly or an office in an election under the *Local Government Act*, the *School Act* or the *Vancouver Charter*, or
  - (b) the authorized representative of such a person
- who is canvassing electors or distributing election material.

**Prohibitions on changes to locks and other access**

- 31** (1) A landlord must not change locks or other means that give access to residential property unless the landlord provides each tenant with new keys or other means that give access to the residential property.
- (1.1) A landlord must not change locks or other means of access to a rental unit unless
- (a) the tenant agrees to the change, and
  - (b) the landlord provides the tenant with new keys or other means of access to the rental unit.
- (2) A tenant must not change locks or other means that give access to common areas of residential property unless the landlord consents to the change.
- (3) A tenant must not change a lock or other means that gives access to his or her rental unit unless the landlord agrees in writing to, or the director has ordered, the change

I therefore award the Tenant compensation in the amount claimed for items she was unable to retrieve from the rental unit.

The Landlord is cautioned that he must follow the *Act* when dealing with a Tenant's personal property, and even in the event the Tenant abandons property, the Landlord must follow Part 5 of the *Residential Tenancy Regulation*.

I find that the Landlord denied the Tenant access to the rental unit contrary to the tenancy agreement and the *Act*. I further find that he breached the *Residential Tenancy Act* by ending the tenancy without proper notice, or service of a Notice to End Tenancy in the proper form.

A tenancy may only be ended in accordance with section 44 of the *Residential Tenancy Act* which reads as follows:

### **How a tenancy ends**

**44** (1) A tenancy ends only if one or more of the following applies:

(a) the tenant or landlord gives notice to end the tenancy in accordance with one of the following:

(i) section 45 [*tenant's notice*];

(i.1) section 45.1 [*tenant's notice: family violence or long-term care*];

(ii) section 46 [*landlord's notice: non-payment of rent*];

(iii) section 47 [*landlord's notice: cause*];

(iv) section 48 [*landlord's notice: end of employment*];

(v) section 49 [*landlord's notice: landlord's use of property*];

(vi) section 49.1 [*landlord's notice: tenant ceases to qualify*];

(vii) section 50 [*tenant may end tenancy early*];

(b) the tenancy agreement is a fixed term tenancy agreement that provides that the tenant will vacate the rental unit on the date specified as the end of the tenancy;

(c) the landlord and tenant agree in writing to end the tenancy;

(d) the tenant vacates or abandons the rental unit;

(e) the tenancy agreement is frustrated;

(f) the director orders that the tenancy is ended.

(2) [Repealed 2003-81-37.]

(3) If, on the date specified as the end of a fixed term tenancy agreement that does not require the tenant to vacate the rental unit on that date, the landlord and tenant have not entered into a new tenancy agreement, the landlord and tenant are deemed to have renewed the tenancy agreement as a month to month tenancy on the same terms.

While the Tenant was in occupation of the rental unit for 13 days in October, I find, based on the heavy handed and inappropriate behaviour of the Landlord that she is entitled to return of the full amount of rent paid for October 2016.

Section 72 of the *Act* allows for repayment of fees for starting dispute resolution proceedings and charged by the Residential Tenancy Branch. While provisions regarding costs are provided for in Supreme Court Proceedings, they are specifically not included in the *Act*. I conclude that

this exclusion is intentional and includes disbursement costs such as registered mailing costs. The Tenant was informed during the hearing that registered mail costs are not recoverable under the *Residential Tenancy Act*.

Having been substantially successful, the Tenant is entitled to recover the \$100.00 fee she paid to file her application.

### Conclusion

I therefore award the Tenant the sum of **\$1,178.71** for the following:

|  |                   |
|--|-------------------|
| Double the Security deposit and pet damage deposit paid as per section 38(6) of the <i>Act</i> | \$600.00          |
| Door hook  | \$9.05            |
| 3 m hooks  | \$10.98           |
| Toilet paper   | \$14.99           |
| Paper towel  | \$18.69           |
| Return October rent  | \$425.00          |
| Filing fee   | \$100.00          |
| <b>TOTAL AWARDED</b>   | <b>\$1,178.71</b> |

The Tenant is given a formal Monetary Order in the amount of **\$1,178.71** and the Landlord must be served with a copy of this Order as soon as possible. Should the Landlord fail to comply with this Order, the Order may be filed in the Small Claims division of the Provincial 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: April 25, 2017

---

Residential Tenancy Branch