



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### Dispute Codes:

MNSD, MNDCT

### Introduction:

This hearing was convened in response to an Application for Dispute Resolution filed by the Tenant in which the Tenant applied for a monetary Order for money owed or compensation for damage or loss and for the return of the security deposit.

The Tenant stated that on August 23, 2018 the Application for Dispute Resolution, the Notice of Hearing, and documents the Tenant submitted to the Residential Tenancy Branch were sent to the Landlord, via registered mail. The Landlord acknowledged receipt of these documents and the evidence was accepted as evidence for these proceedings.

On December 04, 2018 the Landlord submitted evidence to the Residential Tenancy Branch. The Landlord stated that this evidence was served to the Tenant, via registered mail, on December 04, 2018. The Tenant acknowledged receiving this evidence on December 06, 2018 and it was accepted as evidence for these proceedings.

The parties were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. The parties were advised of their legal obligation to speak the truth during these proceedings.

All of the evidence submitted by the parties has been reviewed, but it is only referenced in this written decision if it is relevant to my decision.

### Preliminary Matter

With the consent of both parties the Application for Dispute Resolution was amended to reflect the correct address of the rental unit.

Issue(s) to be Decided:

Is the Tenant entitled to the return of security deposit?  
As the Tenant entitled to compensation for loss of internet service and damaged personal property?

Background and Evidence:

The Landlord and the Tenant agree that the tenancy began on March 15, 2018; that a security deposit of \$800.00 was paid; and that the tenancy ended on June 29, 2018.

The Landlord stated that she scheduled a time to inspect the rental unit on the first Saturday after the Tenant moved into the unit; that she did not inspect the unit on that date because the Tenant began yelling at her; and that she did not schedule a second time to inspect the rental unit.

The Tenant stated that the Landlord never scheduled a time to inspect the rental unit and she did not attend the rental unit for the purposes of inspecting the rental unit when this tenancy began.

The Tenant stated that she mailed her forwarding address to the Landlord on July 03, 2018. The Landlord stated that she received the forwarding address, although she cannot recall the date it was received.

The Landlord and the Tenant agree that the Landlord did not return any portion of the security deposit and the Landlord did not file an Application for Dispute Resolution claiming against the security deposit.

The Landlord stated that on May 30, 2018 the Tenant provided her with authority, in writing, to retain \$100.00 from her security deposit in compensation for a damaged extension cord. The Tenant stated that she does not recall when she provided the Landlord with written authority to retain a portion of her security deposit and she does not recall if she authorized the Landlord to keep \$80.00 or \$100.00.

The Tenant is seeking compensation of \$22.50 because she was unable to use the internet between May 29, 2018 and June 01, 2018. The Landlord and the Tenant agree that internet service was included with the monthly rent.

The Tenant stated that the Landlord changed the access code for the internet and the Landlord did not provide her with the new code until she paid her rent. The Landlord stated that she did not change the access code for the internet. She stated that during in May of 2018 she also experienced some interruption in her internet service.

The Tenant is seeking compensation of \$40.00 for replacing a cat house. The Tenant stated that the house was stored outside her window; that the house was exposed to the elements; that when she returned home on May 21, 2018 after an absence of a few days she found the house was damaged. She stated that it appears the legs of the house have been cut and she believes the Landlord intentionally damaged the house. The Tenant submitted a photograph of the damaged house.

The Landlord stated that she moved the cat house after it fell to the ground under the Tenant's window.

#### Analysis:

Section 23 of the *Residential Tenancy Act (Act)* reads:

- 23 (1) The landlord and tenant together must inspect the condition of the rental unit on the day the tenant is entitled to possession of the rental unit or on another mutually agreed day.
- (2) The landlord and tenant together must inspect the condition of the rental unit on or before the day the tenant starts keeping a pet or on another mutually agreed day, if
- (a) the landlord permits the tenant to keep a pet on the residential property after the start of a tenancy, and
- (b) a previous inspection was not completed under subsection (1).
- (3) The landlord must offer the tenant at least 2 opportunities, as prescribed, for the inspection.
- (4) The landlord must complete a condition inspection report in accordance with the regulations.
- (5) Both the landlord and tenant must sign the condition inspection report and the landlord must give the tenant a copy of that report in accordance with the regulations.
- (6) The landlord must make the inspection and complete and sign the report

without the tenant if

- (a) the landlord has complied with subsection (3), and
- (b) the tenant does not participate on either occasion.

On the basis of the undisputed evidence, I find that the Landlord failed to comply with section 23(3) of the *Act*, as she did not offer the Tenant at least two opportunities to inspect the rental unit at the start of the tenancy.

As the Landlord failed to comply with section 23(3) of the *Act*, the Tenant's right to the return of the security deposit is not affected by section 24(1) or 36(1) of the *Act*.

Section 38(4) of the *Act* authorizes a landlord to retain an amount from a security deposit or a pet damage deposit if, 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.

On the basis of the testimony of the Landlord and in the absence of evidence to the contrary, I find that on May 30, 2018 the Tenant provided her with authority, in writing, to retain \$100.00 from her security deposit in compensation for a damaged extension cord. I therefore find that the Landlord had the right to retain \$100.00 from the Tenant's security deposit, pursuant to section 38(4) of the *Act*.

Section 38(1) of the *Act* stipulates that within 15 days after the later of the date the tenancy ends and the date the landlord receives the tenant's forwarding address in writing, the landlord must either repay the security deposit and/or pet damage deposit or file an Application for Dispute Resolution claiming against the deposits.

On the basis of the undisputed evidence I find that the Landlord failed to comply with section 38(1) of the *Act*, as the Landlord has not repaid the remaining \$700.00 of the security deposit or filed an Application for Dispute Resolution and more than 15 days has passed since the tenancy ended and the forwarding address was received.

Section 38(6) of the *Act* stipulates that if a landlord does not comply with subsection 38(1) of the *Act*, the landlord must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable. As I have found that the Landlord did not comply with section 38(1) of the *Act*, I find that the Landlord must pay the Tenant double the remaining security deposit of \$700.00.

When making a claim for damages under a tenancy agreement or the *Act*, the party making the claim has the burden of proving their claim. Proving a claim in damages

includes establishing that damage or loss occurred; establishing that the damage or loss was the result of a breach of the tenancy agreement or Act; establishing the amount of the loss or damage; and establishing that the party claiming damages took reasonable steps to mitigate their loss.

As the Tenant is the party claiming compensation for damaged property and loss of internet service, the burden of proof rests with the Tenant.

In the case of verbal testimony when one party submits their version of events and the other party disputes that version, it is incumbent on the party bearing the burden of proof to provide sufficient evidence to corroborate their version of events. In the absence of any documentary evidence to support their version of events or to doubt the credibility of the parties, the party bearing the burden of proof would fail to meet that burden.

I find that the Tenant submitted insufficient evidence to establish that her internet service was disrupted by the actions of the Landlord. In reaching this conclusion I was heavily influenced by the absence of evidence to corroborate the Tenant's submission that the Landlord changed the passcode to the internet or that refutes the Landlord's testimony that she did not change the passcode. I therefore dismiss the Tenant's application for compensation for loss of internet.

I find that the Tenant submitted insufficient evidence to establish that the Landlord damaged the cat house. In reaching this conclusion I was heavily influenced by the absence of evidence that refutes the Landlord's testimony that she did not damage the house. I therefore dismiss the Tenant's application for compensation for the damaged cat house.

I have viewed the photograph of the damaged cat house and I cannot concur with the Tenant's conclusion that it has been cut. I find it entirely possible that the house fell because it was exposed to the elements at which time the legs came away from the base of the house in a manner that makes it appear that the legs were cut from the base.

#### Conclusion:

The Tenant has established a monetary claim of \$1,400.00, which includes double the remaining security deposit of \$700.00 as compensation for the cost of filing this

Application for Dispute Resolution, and I am issuing a monetary Order in that amount. In the event that the Landlord does not voluntarily comply with this Order, it may be served on the Landlord, filed with the Province 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: December 14, 2018

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Residential Tenancy Branch