



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards  
Ministry of Housing and Social Development

## DECISION AND REASONS

Dispute Codes: MNSD & MNDC

### Introduction:

This hearing dealt with an application by the tenant seeking the return of double his security deposit plus interest and compensation for lost and damaged personal possessions. Both parties appeared for the hearing and were provided the opportunity to be heard and respond to the evidence of the other party.

### Issues to be Determined:

Is the tenant entitled to the return of double his security deposit plus interest? Has the tenant established a monetary claim related to lost or damaged personal possessions due to the actions of the landlord?

### Background and Evidence:

This tenancy began on November 1, 2008 for the monthly rent of \$475.00 and a security deposit of \$237.50. The tenancy ended on approximately December 8<sup>th</sup> or 10<sup>th</sup>, 2008.

The tenant presented the following arguments:

- That the landlord posted a hand written notice on his door on December 8, 2008 indicating that he had been evicted;
- That he paid half the month's rent owed for December 2008 in November 2008 and the landlord refused to accept the remaining rent owed on December 8, 2008;
- That despite contacting the local police he was unable to gain access to his rental unit;
- That the landlord removed his possessions and left them in the hallway;
- That the landlord was provided with a forwarding address in writing on December 12, 2008 and a request for the return of the tenant's security deposit; and
- That the tenant only received two of his personal possessions back from the landlord.

The landlord submitted the following:

- That the tenant was served a proper 10 day Notice to End Tenancy due to non-payment of rent on December 1, 2008;

- That no rent was received from the tenant for December 2008;
- Confirming that the tenant was locked out of the rental unit effective December 10, 2008; and
- That the tenant's person possessions were stored and returned.

The tenant provided documentary evidence in support of his application including copies of the hand written notice that he was evicted, a list of alleged personal possessions which are now missing, a copy of the correspondence providing the forwarding address and a copy of the shelter information confirming the tenancy began on November 1, 2008 for \$475.00 a month and that the security deposit was paid.

### Analysis:

I grant the tenant's application in part.

I reject the landlord's claim that a proper 10 day Notice to End Tenancy was served. The landlord failed to provide a copy of this alleged notice for this proceeding and at the request of the tenant's advocate. Even if I accepted that a notice was served I still would find that the landlord egregiously breached the *Act* by evicting the tenant without receiving an Order of Possession from the Residential Tenancy Branch. As a result of this breach the landlord is liable for any losses or damage experienced by the tenant.

I also accept the evidence before me that the landlord failed to comply with section 38(1) of the *Act* by failing to return the tenant's security deposit plus interest within 15 days of receiving the tenant's forwarding address in writing. As a result the landlord must pay the tenant double his security deposit plus interest.

I reject the tenant's monetary claim for lost or damaged possessions. The tenant failed to provide any evidence to support that any possessions were damaged or lost. The tenant failed to corroborate the claimed value of the alleged missing possessions. The tenant also failed to provide any evidence supporting his claim that he paid the landlord half a month's rent for December 2008 in advance. In the absence of any evidence to support his claims I find that the tenant failed to met the burden of proof required to accept this claim.

However, I am satisfied based on the evidence before me that the landlord breached the *Act* by evicting the tenant outside of the provisions of the *Act*. On the balance of probabilities I find that the landlord is liable for the tenant's loss based on the value of his monthly rent, or for the sum of \$475.00.

I find that the tenant has established a total monetary claim for the sum of \$950.59 comprised of double his security deposit of \$475.00, accumulated interest of \$0.59, and \$475.00 in damages due to an illegal eviction. I grant the tenant a monetary Order for this sum. This Order may be filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

### Conclusion:

The tenant's application is granted in part. The landlord has breached the *Act* and is liable for the tenant's loss and damages.

Dated March 04, 2009.

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Dispute Resolution Officer