



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding B & K HOLDINGS LTD  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNSD, MNDC, LRE

### Introduction

This matter dealt with an application by the Tenant for compensation for loss or damage under the Act, the regulations and the tenancy agreement, to restrict the Landlord's right of entry to the rental unit and for the return of a security deposit.

The Tenant said she served the Landlord with the Application and Notice of Hearing (the "hearing package") by registered mail on March 8, 2013. Based on the evidence of the Tenant, I find that the Landlord was served with the Tenant's hearing package as required by s. 89 of the Act and the hearing proceeded with both parties in attendance. The Landlord is deemed to have been served the Tenant's hearing package on March 13, 2013 five days after the package was mailed even though the Landlord said she did not pick up her registered mail package until March 21, 2013.

At the start of the conference call the Tenant said she moved out of the rental unit on February 4, 2013 so she is withdrawing her claim to restrict the Landlords right of entry into the rental unit.

### Issues(s) to be Decided

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

### Background and Evidence

This tenancy started on May 1, 2011 as a month to month tenancy. The tenancy ended March 1, 2013 due to a written notice from the Tenant to the Landlord in December, 2012 ending the tenancy March 1, 2013. Rent was \$900.00 per month payable in advance of the 1<sup>st</sup> day of each month. The Tenant paid a security deposit of \$450.00 on May 1, 2011. A move in condition inspection report was completed and signed, but it

was not dated. The Landlord said there was a move out condition report completed by her, but she did not submit it into evidence.

The Tenant said that she moved out of the rental unit on February 4, 2013 and she gave the Landlord her forwarding address in writing with her notice to end the tenancy in December, 2012. The Tenant continued to say that she has not received her security deposit back and she has a number of other monetary claims against the Landlord. The Tenant said her claims are as follows:

1. The Landlord should have given her a two month notice to end the tenancy because there was renovation to the unit and therefore the Landlord should have given her 2 months free rent or \$1,830.00. The Landlord said the renovations the Tenant is talking about were emergency repairs to the bathroom in the Tenant's unit for leaking pipes.
2. The Tenant said the Landlord should have returned her deposit of \$450.00 for suite 108 and \$225.00 for suite #609. The Landlord said the Tenant is not a tenant of suite 609 and she has not paid a security deposit for 609. The Landlord continued to say she has not returned the Tenant's security deposit for suite 108 and the Landlord said she has made an application to retain the security deposit.
3. The Tenant said the Landlord should pay her cable for January and February, 2013 in the amount of \$161.75. The Landlord said cable is not included in the tenancy agreement.
4. The Tenant said the Landlord should pay for the costs she incurred in cleaning the carpets during the tenancy in the amount of \$224.00. The Landlord said the carpets were professional cleaned prior to the tenancy starting.
5. The Tenant said the Landlord should return the Tenants rent for suite 609 for the month of March, 2013 in the amount of \$450.00. The Landlord said this hearing is not about suite 609 and the Tenant is not a tenant of suite 609.
6. The Tenant said the Landlord should return ½ of February, 2013 rent as the Tenant moved out on February 4, 2013 and she paid for the full month of February, 2013. The Landlord said the Tenant gave notice for March 1, 2013 so the Tenant is responsible for the February, 2013 rent.
7. The Tenant said she over paid the rent in October and November, 2012 and the Landlord should return \$1,800.00 to her. The Tenant provided hand written cheque numbers that she said were Ministry cheques that prove she double paid the rent in October and November, 2012. The Landlord said the Tenant did not over pay the rent in October and November, 2012 and she provide deposit slips to prove it. The Landlord had removed the deposit amounts so the deposit slips did not verify the amount the Tenant paid.
8. The Tenant said these claim add up to \$5,670.75 and she is also claiming \$7,329.25 for health reasons, theft of money and breach of contract. The Tenant said she had no evidence to show the Landlord sole caused these losses to her, but she was angry so she included these claims in her application. The Landlord said there is no justification for these claims.

The Tenant said in closing that the Landlord did not properly complete a move in or move out condition inspection and the Landlord breached a number of other clauses in the tenancy agreement so the Landlord should owe her compensation.

The Landlord said in closing that the Tenant has not proven any of the claims against her and that the damage deposit of \$450.00 should not be returned to the Tenant as the Tenant said the Landlord could keep it for the damages done to the rental unit.

### Analysis

For a monetary claim for damage of loss to be successful an applicant must prove a loss actually exists, prove the loss happened solely because of the actions of the respondent in violation to the Act, the applicant must verify the loss with receipts and the applicant must show how they mitigated or minimized the loss.

The Tenant has not submitted corroborating evidence that meets the burden of proof for all of her claims except the return of the security deposit. The two Month Notice claim is a result of misinformation by the tenant, the claims about suite 609 are not applicable to this application as it is about the tenancy in unit 108. The Tenants claim for cable and carpet cleaning are not the Landlord's responsibility and the rent payment claims are not proven by corroborating evidence. These claims are primarily the Tenant's word against the Landlord's word. The burden of proving a claim lies with the applicant and when it is just the applicant's word against that of the respondent that burden of proof is not met. I dismiss all of the Tenant's application except the Tenant's claim for the return of the security deposit.

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 accept the Tenant's testimony and written evidence that she gave the Landlord a forwarding address in writing during December, 2012, with her notice to end the tenancy and again with her hearing package that is deemed to be served to the Landlord on March 13, 2013. 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 by January 15, 2013. Consequently I find for the Tenant and grant an order for double the security deposit of \$450.00 in the amount of  $\$450.00 \times 2 = \$900.00$ .

As the Tenant was partially successful in this matter and pursuant to section 67 a monetary order for \$900.00 has been issued to the Tenant. This Monetary order represents double the security deposit in the amount of \$900.00.

Conclusion

I find in favour for a part of the Tenant's monetary claim. Pursuant to sections 38 and 67 of the Act, I grant a Monetary Order for \$900.00 to the Tenant. The order must be served on the Respondents 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: April 08, 2013

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Residential Tenancy Branch

