



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

### Dispute Codes:

### **MNDC**

#### Introduction

This hearing was scheduled in response to the tenant's Application for Dispute Resolution, in which the tenant has requested compensation for damage or loss under the Act.

The tenant provided affirmed testimony that on January 9, 2014 a copy of the Application for Dispute Resolution, Notice of Hearing and evidence was sent to each landlord; via registered mail. A Canada Post tracking number and receipt was provided as evidence of service to each landlord.

The tenant said she used the postal box address that was given to her by the landlords at the start of the tenancy. The rental unit was in a rural area and postal boxes are used for mail; there is no residential postal delivery service. When the tenant mailed the documents the postal mistress at the postal office confirmed that the postal box address continued to be used by the landlords.

Both pieces of registered mail were returned to the tenant, marked as unclaimed.

Section 89 of the Act indicates that an application for dispute resolution may be given to the landlord by registered mail to an address where the landlord carries out business. As the landlord provided the tenant with their postal box address at the start of the tenancy I find that address is that used by the landlord for the business of the tenancy.

Therefore, I find, pursuant to section 90 of the Act, that each landlord has been served with the hearing documents effective the 5<sup>th</sup> day after mailing; January 14, 2014. A failure to claim registered mail does not allow a party to avoid service.

Neither landlord attended the hearing.

Issue(s) to be Decided

Is the tenant entitled to compensation in the sum of \$1,844.89 as damage or loss under the Act?

Background and Evidence

The tenant supplied copies of several emails sent between the parties on October 1 and 2, 2013. The parties reached agreement that the tenant would pay \$1,500.00 rent for a 6 month period of time. There was also an agreement that the tenant would be paid to feed some horses on the property.

The rental unit was approximately 1 hours drive out of 100 Mile House; in a rural area. The closest community was forty-five minutes away; taking into account winter driving conditions.

The tenancy commenced on November 15, 2013; the tenants paid \$750.00 for November, December 2013 and January 2014. Rent was due on the 15<sup>th</sup> day of each month. A tenancy agreement was not signed.

The tenant had discussions with the landlord that she wished to end the tenancy; the female landlord had been amenable but a date ending the tenancy had not been established.

On December 22, 2013, at approximately 6:30 p.m. the tenant, with her 7 week old child and partner returned to the property. The landlord was in the driveway of the rental unit; they had a large bonfire and were drinking with several friends. All of the tenant's personal property had been removed from the home and placed at the end of the driveway. The male landlord told the tenant that they were being evicted and handed the tenant a letter.

A copy of the letter issued by the landlord was provided as evidence. The letter confirmed that \$750.00 had been paid by the tenants and that the tenants were to care for the animals. The landlord indicated the rent was not refundable. The letter stated that as the tenant was not fulfilling her part of the bargain they were being evicted.

The tenant said that a friend of the landlord gave her \$200.00 which she accepted as some sort of compensation. The tenant and her partner gathered up what belongings they could; loaded them into their van and left the property. The tenant did not wish to get into a confrontation with the landlord and was left feeling very fearful for her safety.

The tenant has made the following claim:

Rent refund	\$300.00
Motel costs	339.00
Missing food	124.00
Damaged and spoiled food	138.95
Gas	49.94
Damaged playpen, baking dish, books	146.00
Missing necklace	150.00
Power box that was to be returned	109.00
Area rug (\$40.00), antique washtub (\$30.00), IKEA table (\$249.00) and bed (\$139.00)	458.00
Damages – Privacy	30.00
<b>TOTAL</b>	<b>\$1844.89</b>

The tenant is requesting the balance of rent they had paid be returned. The tenant said she deducted the \$200.00 cash payment from rent owed but also submitted that she believed that money was for the motel cost.

The tenant spent 7 nights in a 100 Mile House motel; a receipt for this cost was supplied as evidence. The tenants remained in the motel unit new accommodation could be secured for January 1, 2014. Fuel costs for travel were incurred.

The tenants had purchased a box of premium grass-fed beef from a local producer; the box returned by the landlord had only ground beef remaining; the landlord had taken all of the other meat. The tenant provided a copy of a receipt for the cost of the meat and has claimed \$30.00 less, representing the value of the ground beef.

The tenant has claimed compensation for food that was spoiled or dirtied. The landlord put their food into bags and boxes, with no attention paid to whether it would get dirty or spoil.

Six faxed photographs were supplied as evidence; these were submitted by facsimile from a Service BC office. The photos were difficult to discern; the tenant provided a description of each during the hearing. A new playpen with change table made by Greco had been ripped down the side; it was also wet and dirty. A glass baking dish was broken and several books were damaged. Several photos were of the van, with personal items that had been loaded. The tenant requested compensation for the playpen only.

The tenant claimed the cost of a power box that had been purchased in the sum of \$109.00. They had wanted to return this but the box that had the receipt was missing and it could then not be returned.

The tenant had hung her necklace on a hook in the bathroom. She was not able to wear it as she was breastfeeding her son. It was gold with a Capricorn imprint and had

charms attached. The tenant said she looked for the necklace, but it could not be found. It was delicate and small and had a lot of sentimental value. The tenant estimated a cost of \$150.00; although the value to her was much greater.

On December 23, 2013 the tenant spoke with an RCMP officer to request accompaniment to the property to pick up items that could not fit in their van the day prior. The officer told the tenant that they could go to the property but that the landlord would have the right to refuse them entry. The police suggested that unless the matter was urgent the tenant might want to think about going back to the property. The tenant said she had felt very threatened by the behaviour of the landlord and was worried the landlord might become violent. The tenant decided not to go back to the property; even though there were items there she wanted returned.

The tenant left a wool rug, the antique washtub and a table and bed that had been given to her by the previous tenants. The tenant provided copies of IKEA costs for the table and bed.

On each of December 20, 21 and 22, 2013 the landlord entered the rental unit without authorization. On the 20<sup>th</sup> and 21<sup>st</sup> the tenant came home to find buckets of water that had been left in the home by the landlord. On December 22, 2013 the landlord was present on the property and evicted the tenant without any warning.

The tenant described the impact of the illegal entry and the eviction; she was left feeling threatened and shocked.

The tenant supplied a copy of a bank statement showing purchases made between December 23 and December 27, 2013 for gas, groceries and the motel.

### Analysis

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. Proving a claim in damages requires that it be established that the damage or loss occurred, that the damage or loss was a result of a breach of the tenancy agreement or Act, verification of the actual loss or damage claimed and proof that the party took all reasonable measures to mitigate their loss.

A landlord may only take possession of a rental unit if an Order of possession has been issued by the Director. Even if an Order of possession has been issued a landlord does not possess the right to remove a tenant's personal property from the unit; a Writ of possession must be obtained from the Supreme Court of British Columbia and a court-approved bailiff must be hired if the tenant does not then vacate.

There was no evidence before me that the landlord had a legal right to enter onto the rental unit property, to remove the tenant's personal property and summarily evict the

tenant. I find the actions of the landlord, described by the he tenant, as the most egregious breach of the Act.

I find that the losses claimed by the tenant would not have been incurred if the landlord had not breached the legislation. Therefore, based on what I find to be extremely reasonable costs set out by the tenant; which are supported by receipts, proof of payment and estimates; that the tenant is entitled to compensation.

In relation to rent, the tenant had paid \$750.00 for the period November 15, 2013 to February 14, 2014. From December 22, 2013 to February 14, 2014 the tenant paid rent in the sum of \$443.88 (54 days X \$8.22/day.) The tenant has claimed compensation in the amount \$300.00, which I find is more than reasonable. Therefore, pursuant to section 65(c) of the Act, I find that the tenant is entitled to return of \$300.00 representing the sum claimed.

I find the fuel costs reasonable in the circumstances, given the travel that would have been incurred driving back into 100 Mile House and making arrangements to locate new housing.

I have accepted the claim for the power box as the landlord denied the tenants the right to return the item; resulting a loss to the tenant, forcing her to keep something she no longer wanted. It was the breach of the Act by the landlord that resulted in this cost to the tenant.

I have accepted the estimate of the cost of items left on the property. I considered the tenant's affirmed testimony, which I found consistent and believable. Given the events that had taken place on December 22, 2014, I find the tenant's assessment of the situation was reasonable and that her decision not to return to the property a wise one. If the landlord had not taken such shocking action the tenant would not have been placed in a position where she felt fearful; resulting in her decision to leave the remaining belongings on the property. Even with the assistance of the RCMP the tenant wanted to avoid a confrontation. Therefore, I find that the tenant is entitled to the estimated cost to replace the items left on the property.

I find that the tenant has made a reasonable claim in relation to entry made by the landord to the rental unit property. In the absence of proper written notice of entry in accordance with section 29 of the Act, the landlord had no right to enter the home. Therefore, I find that the tenant is entitled to compensation equivalent to \$10.00 for each of the 3 entries made by the landlord.

Therefore, the tenant is entitled to the following compensation:

	Claimed	Accepted
Rent refund	\$300.00	\$300.00
Motel costs	339.00	339.00
Missing food	124.00	124.00
Damaged and spoiled food	138.95	138.95
Gas	49.94	49.94
Damaged playpen, baking dish, books	146.00	146.00
Missing necklace	150.00	150.00
Power box that was to be returned	109.00	109.00
Area rug (\$40.00), antique washtub (\$30.00), IKEA table (\$249.00) and bed (\$139.00)	458.00	458.00
Damages – Privacy	30.00	30.00
<b>TOTAL</b>	<b>\$1844.89</b>	<b>\$1844.89</b>

Based on these determinations I grant the tenant a monetary Order in the sum of \$1,844.89. In the event that the landlord does not 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.

#### Conclusion

The tenant is entitled to compensation as claimed; a monetary Order has been issued.

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 24, 2014

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Residential Tenancy Branch

