



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing and Social Development

## **DECISION**

Dispute Codes (MNR), MNDC, MNSD, FF

### Introduction

This matter dealt with an application by the Tenants for the return of their security deposit as well as for compensation for the Landlord's failure to return the security deposit within the time limits required under the Act. The Landlord applied for a monetary order for unpaid utilities, for cleaning expenses and for compensation for damages as well as to recover the filing fee for this proceeding and to keep the Tenants' security deposit.

### Issues(s) to be Decided

1. Are there arrears of utilities and if so, how much?
2. Is the Landlord entitled to compensation and if so, how much?
3. Are the Tenants entitled to the return of their security deposit and if so, how much?

### Background and Evidence

This tenancy started on February 1, 2009 and ended on June 30, 2009 when the Tenants moved out. Rent was \$1,050.00 per month plus 50% of the gas and Hydro bills for the rental property. The Tenants paid a security deposit of \$525.00 at the beginning of the tenancy. The Landlord did not do a move in or a move out condition inspection report.

The Landlord claimed that the Tenants have unpaid utilities. She also claimed that she had to clean the carpets at the end of the tenancy because there was a smell of cat urine in one of the rooms. The Landlord said that the Tenants broke a glass piece in the refrigerator. The Landlord claimed that she did not receive the Tenants' forwarding address in writing until she got their application in this matter

The Tenants do not dispute that the last month's gas and hydro bills are unpaid. The Tenants said that they steam cleaned the carpets at the end of the tenancy and that they did not have an odour. The Tenants claimed that there was a missing piece of glass in the refrigerator at the beginning of the tenancy and that the Landlord told them she would replace it but never did. The Tenants said they left their forwarding address in writing in the Landlord's mail box on June 30, 2009 with instructions as to how to find

their keys. The Tenants said that the Landlord contacted them later that day to advise them that she would not be returning their security deposit.

## Analysis

Section 38(1) of the Act says that a Landlord has 15 days from either the end of the tenancy or the date she receives the Tenant's forwarding address in writing (whichever is later) to either return the Tenant's security deposit or to make an application for dispute resolution to make a claim against the deposit. If the Landlord does not do either one of these things and does not have the Tenant's written authorization to keep the security deposit then pursuant to s. 38(6) of the Act, the Landlord must return double the amount of the security deposit.

I find on a balance of probabilities that the Tenants gave the Landlord their forwarding address in writing June 30, 2009. I make this finding based on the corroborating evidence of the Tenants and the fact that the Landlord contacted the Tenants the same day that they moved out to advise them that she would not return the deposit due to alleged deficiencies. I also find that the Landlord did not return the Tenants' security deposit, did not make an application for dispute resolution to make a claim against the deposit until July 31, 2009, and did not have the Tenants' written authorization to keep the security deposit. Consequently, pursuant to s. 38(6) of the Act, the Landlord must return double the amount of the security deposit (or \$1,050.00) to the Tenants. As the Tenants have been successful in this matter, I also find that they are entitled to recover the \$50.00 filing fee for this proceeding.

The Tenants agreed to deduct the amount of the last month's Hydro and gas bills from their monetary award. The gas bill for the period May 26 – June 24, 2009 is \$43.86 and the Tenants' share is \$21.93. The Hydro bill for the period May 27 – July 24, 2009 is \$49.87. As the Tenants are only responsible for the period ending June 30, 2009, the total amount of the bill should be prorated as follows:  $\$49.87 \times 35/59 \text{ days} = \$29.58$  and the Tenants' share of this is \$14.79.

Sections 23 and 35 of the Act say that a Landlord must complete a condition inspection report at the beginning of a tenancy and at the end of a tenancy in accordance with the Regulations and provide a copy of it to the Tenant (within 7 to 15 days). A condition inspection report is intended to serve as some objective evidence of whether the Tenant is responsible for damages to the rental unit during the tenancy or if she has left a rental unit unclean at the end of the tenancy. In the absence of a condition inspection report, other evidence may be adduced but is not likely to carry the same evidentiary weight especially if it is disputed.



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In the absence of a condition inspection report or any other corroborating evidence, I find that there is insufficient evidence to support the Landlord's claims for carpet cleaning and the cost of a broken piece of glass in the refrigerator and those parts of her claim are dismissed without leave to reapply. As the Landlord has only been partially successful in her application, I award her one-half of the filing fee (or \$25.00) for this proceeding.

I order pursuant to s. 72 of the Act that the Landlord keep **\$61.72** of the Tenants' security deposit and to return the balance of the security deposit to them as follows:

Double security deposit:	\$1,050.00
Tenants' Filing fee:	<u>\$50.00</u>
Subtotal:	\$1,100.00
Less: Unpaid Utilities:	(\$36.72)
Landlord's Filing fee:	<u>(\$25.00)</u>
TOTAL OWING:	\$1,038.28

## Conclusion

The Landlord's application for compensation for damages to the rental unit is dismissed without leave to reapply. A monetary order in the amount of **\$1,038.28** has been issued to the Tenants and a copy of the Order must be served on the Landlord. If the amount is not paid by the Landlord, the Order may be filed in the Provincial (Small Claims) Court of British Columbia 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: November 09, 2009.

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Dispute Resolution Officer