



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing and Social Development

## **DECISION**

Dispute Codes      MND, MNSD, FF

### Introduction

This hearing dealt with the Landlords' Application for Dispute Resolution, seeking to retain the security deposit, a monetary order for alleged damage to the rental unit and to recover the filing fee for the claim.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Issues(s) to be Decided

Are the Landlords entitled to monetary relief or to keep the security deposit?

### Background and Evidence

This tenancy began in March of 2009, with the Tenant providing the Landlords a security deposit of \$625.00 and a pet damage deposit of \$625.00. At the outset of the tenancy the Landlords did not perform a written condition inspection report in accordance with the Act and regulations.

On or about October 1, 2009, at the end of the tenancy, one of the Landlords met with the Tenant to do an outgoing "walk through". The Tenant had a witness at the hearing who was present at the time of the walk through. The Landlord asked the Tenant to do one or two other things outside the rental unit and stated, according to the witness, "... that will be good enough outside", or words to that effect. Again, the Landlords did not perform an outgoing written condition inspection report in accordance with the Act and regulations.

It was apparent to the Tenant and his witness at the time that the Landlord was upset the Tenant had been keeping rats and snakes at the rental unit. According to the testimony, the snakes were in aquariums inside the rental unit and the rats were kept in cages in the garage. Nevertheless, the Landlord seemed very upset about this.

Following the Tenant doing the one or two required things on the outside, the Landlords then issued the Tenant a refund of his deposits in the amount of \$1,250.00.

Four or five days after depositing the Landlords' cheque, the Tenant discovered that a stop payment had been put on the cheque, and that he had been charged with overdraft and NSF bank charges.

The Tenant's witness contacted the Landlord regarding the stopped cheque and the Landlord, "... would not stop talking about the snakes being in the [rental unit] without his knowledge ..." according to the witness. According to the witness the Landlord then told him, "... if you do not negotiate the deposit, then I will charge you with cleaning costs...", or words to that effect. The Tenant refused to negotiate and the Landlords filed this claim, on October 9, 2009.

The day after filing their Application, the Landlords sent the Tenant a cheque for \$351.24

The Landlords are claiming that the Tenant did not clean the rental unit and did not adequately repair a damaged door at the rental unit. They note in their Application that the Tenant was keeping unauthorized pet snakes in the rental unit and had rats in the garage.

The Tenant testified that there was a break in at the rental unit and this caused damage to the door. He testified he does not know who broke into the rental unit. The Tenant testified he repaired the door as best as he could prior to vacating the rental unit. His witness testified that during the walk through at the end of the tenancy, he heard one of the Landlords state, "... don't worry about the door... it was kicked in and repaired on a previous break in..." or words to that effect.

### Analysis

Based on the foregoing, the testimony and evidence, and on a balance of probabilities, I **find that the Landlords' Application must be dismissed without leave to reapply.**

I find that the Landlords have provided insufficient evidence to show the Tenant failed to clean the rental unit to a reasonable standard, or that he did any damage to the rental unit. As the Landlords did not do an incoming condition inspection in accordance with the Act or regulations, there is insufficient evidence to show the condition of the door, or for that matter, any part of the rental unit at the outset of the tenancy. Furthermore, the Tenant tried to repair the door which had been damaged twice, once by a break in during his tenancy and the other during a prior tenancy. I find the alleged damage to the door was not the fault of the Tenant.

I further find the Landlords have breached sections 23 and 35 of the Act, by failing to do written incoming or outgoing condition inspection reports. Under sections 24 and 36 of the Act the right of the Landlords to claim against the security or pet deposits has been extinguished by their own breaches.

I find that the Landlords acted in a deceptive manner by issuing the Tenant a full refund of his deposits, and then shortly after stopping the payment on the cheque. As to returning a portion of the deposits after filing their Application, I find the Landlords had no right or authority under the Act to withhold any portion of the security or pet deposits.

Therefore, having found the Landlords have failed to prove this or any claim against the Tenant, I dismiss all their claims without leave to reapply and make no order for the recovery of the filing fee.

Under policy guideline 17, and section 67 of the Act, I also order the Landlords to return all the balance of security and pet deposits to the Tenant in the amount of **\$898.76**. The Tenant is granted and issued an order in those terms. This order may be enforced in the Provincial Court of British Columbia.

Lastly, I have sent the Landlords a copy of a guide book to the Residential Tenancy Act and encourage them to adhere to the Act and regulation.

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: February 17, 2010.

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Dispute Resolution Officer