



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing and Social Development

## **DECISION**

**Dispute Codes**      MNSD, FF

### **Introduction**

This hearing was convened by way of conference call to deal with the tenants' application for return of double the amount of the security deposit, and to recover the filing fee from the landlord for the cost of this application.

The parties attended, gave affirmed testimony and were given the opportunity to cross examine each other on their evidence.

All information provided by the parties has been reviewed and is considered in this Decision.

### **Issues(s) to be Decided**

Are the tenants entitled to return of the security deposit, or double the amount of the security deposit?

### **Background and Evidence**

This month-to-month tenancy began in 2004 however the parties disagree as to the date. The landlord testified that the tenancy began on November 1, 2004 and the tenant testified that the date was December 1, 2004. The parties agree that the landlord collected a security deposit from the tenants on November 1, 2004 in the amount of \$1,100.00. The tenancy ended on December 1, 2008. No condition inspection report was completed at the beginning of the tenancy or at the end of the tenancy.

Rent in the amount of \$2,200.00 was payable in advance on the 1<sup>st</sup> day of each month, and there are no rental arrears.

The tenants testified that the landlord gave them a 2 Month Notice to End Tenancy for Landlord's Use of Property on October 5, 2008. The tenants moved in accordance with the notice, and the landlord's brother did a walk-through of the rental unit with the tenants at the end of the tenancy and said the unit looked great.

On December 10, 2008 the tenants mailed, by regular mail, their forwarding address in writing to the landlord. They are certain that the landlord received it because the landlord applied for dispute resolution and served the tenants at that address. The landlord did not appear at the hearing scheduled for his application, and the application was dismissed. The tenants are claiming double recovery of the security deposit and to recover the \$50.00 filing fee for the cost of this application.

The landlord testified that the 2 Month Notice to End Tenancy for Landlord's Use of Property was issued on September 28, 2008. He further stated that he called the tenants at the number provided, but received no response or call back from the tenants. He subsequently sent a letter, but didn't receive a response, so he did not trust the address.

He further testified that he could not attend the previous hearing scheduled for February 18, 2009 because he is a contractor and had to work. He stated that he tried to resolve this matter with the tenants, but they don't want to talk to him.

### **Analysis**

Section 38 of the *Residential Tenancy Act* is clear:

- 38** (1) 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.

Subsection (3) states that the landlord may retain an amount ordered by the director, or is not required to return any portion that has not been paid by the tenant. Subsection (4) (a) states that the landlord may retain any amount the tenant agrees to in writing.

Further,

- (6) 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 find that the tenancy ended on December 1, 2008 and the tenants sent the landlord their forwarding address in writing on December 10, 2008. I also find that the tenant did not agree in writing that the landlord retain any part of the security deposit. The landlord applied for dispute resolution, and failed to attend the scheduled hearing on February 18, 2009. I further find that the landlord has failed to repay the security deposit within 15 days of receiving the tenant's forwarding address in writing. I further find that the landlord's failure to attend the scheduled hearing negated his application for dispute resolution, thereby requiring the landlord to return the security deposit.

I find that the tenants have established a claim for the security deposit of \$1,100.00, accrued interest of \$38.94, and double the base amount of the security deposit in the amount of \$2,200.00, for a total of \$2,238.94. The tenants are also entitled to recover the \$50.00 filing fee for this application.

**Conclusion**

I grant the tenants an order under section 67 for the balance due of \$2,288.94. This order may be filed in the Provincial Court of British Columbia, Small Claims division 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 05, 2010.

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Dispute Resolution Officer