



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing and Social Development

## DECISION

Dispute Codes MNDC, MNSD, & FF

### Introduction

This hearing dealt with the tenants' application seeking compensation for loss or damage under the *Act* on the basis that the rental unit became uninhabitable. The tenants are also seeking the return of double their security deposit plus interest.

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.

The landlord made a request to provide new evidence at the hearing but I decline their request. The landlords were served with sufficient notice of this application and hearing and there is no evidence before me to conclude that the landlords could not have provided this evidence prior to this hearing in accordance with the rules of procedure.

### Issues(s) to be Decided

Are the tenants entitled to a rebate of one month's rent due to the rental unit becoming uninhabitable?

Are the tenants entitled to the return of double their security deposit plus interest?

### Background and Evidence

This tenancy began on April 1, 2006 for the monthly rent of \$1,300.00 and a security deposit of \$650.00. The tenancy ended on December 12, 2009 when the tenants terminated the tenancy agreement due to a terrible smell in the rental unit.

The tenants submitted that this was a final straw in a history of their perception that the landlord was failing to repair and maintain the rental unit. In the hearing the tenants acknowledged that they did not provide the landlords with an opportunity to correct the problem because of the previous history of lack of maintenance by the landlords.

The tenants submit that they should be reimbursed the full month's rent for December 2009 due to the terrible smell in the rental unit.

The tenants also seek the return of double their security deposit plus interest. The tenants provided evidence demonstrating that the landlord was provided with their forwarding address in writing by registered mail in April 2010.

The landlords stated that they retained the tenants' security deposit as payment towards half a month's rent in December 2009. The landlords submit that they did not cash the tenants rent cheque for December 2009 and were satisfied to keep the security deposit in exchange for half a month's rent. The landlords acknowledged in the hearing that they did not return the tenants' security deposit or file an application for Dispute Resolution to retain the tenants' security deposit after receiving the tenants' forwarding address in writing. The landlords did not provide any evidence to support their claim.

The tenants rejected the landlords claim that the rent cheque for December 2009 was not cashed.

### Analysis

Based on the testimony and evidence provided, and on a balance of probabilities, I find as follows:

I grant the tenants' application in part. I do not accept the tenants' submission that they are entitled to compensation of one month's rent for December 2009. Although I accept that there was a significant smell in the rental unit which needed to be resolved, the tenants never provided the landlords with an opportunity to make the repair.

It is clear that the tenants made up their mind to vacate, regardless of whether the landlords made the repair in a timely manner. This does not entitle the tenants to compensation however as the *Act* requires that the tenants can only end a tenancy early in a situation where there is a material breach of the tenancy agreement and the landlord has failed to correct the material breach within a reasonable timeframe after receiving written notice from the tenant.

The tenants failed to provide any written notice to the landlord of a material breach and subsequently breached the tenancy agreement by vacating the rental unit without providing proper or sufficient notice as required by section 45 of the *Act*. I dismiss this portion of the tenants claim.

Section 38(1) of the *Act* requires a landlord to either return a tenant's security deposit or to file an application for Dispute Resolution to retain the security deposit within 15 days of receiving the tenant's forwarding address in writing. Section 38(6) of the *Act* states that if a landlord fails to comply, or follow the requirements of section 38(1), then the landlord must pay the tenant double the security deposit.

I accept the evidence of the tenants that the landlords received their forwarding address in writing and that the landlords did not file an application for Dispute Resolution requesting to retain the tenants' security deposits.

Having granted the tenants' application in part, I grant the tenants' request to recover half the cost of the filing fee paid for submitting this application from the landlords for the sum of \$25.00. I find that the tenants' has established a total monetary claim for the sum of **\$1,347.18**. This sum is comprised of double the security deposit of \$650.00, accumulated interest of \$22.18 plus the \$25.00 filing fee.

### Conclusion

I grant the tenant's application and have issued a monetary Order for the sum of **\$1,347.18**. This Order must be served upon the landlord. This Order may be filed with the Province of British Columbia Small Claims Court 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 17, 2010.

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Dispute Resolution Officer