



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing and Social Development

## **DECISION**

Dispute Codes      MNSD, FF

### Introduction

This hearing dealt with an application by the tenants for return of the security deposit and recovery of the filing fee. Both parties participated in the conference call hearing.

### Issues to be Decided

Are the tenants entitled to any of the above under the Act.

### Summary of Background and Evidence

This tenancy started in June, 2010 with rent of \$850.00, the tenant paid a security deposit of \$425.00. On August 31, 2010 the landlord served the tenant's with a 1 month Notice to End Tenancy for Cause: the tenants have allowed an unreasonable number of occupants in the unit/site; put the landlord's property at significant risk; tenant has assigned or sublet the rental unit/site without landlord's written consent; rental unit/site must be vacated to comply with a government order.

The tenants testified that the notice to end tenancy for cause was then served on them after their son's visit which was June 30 through July 29, 2010. The tenant's stated that there was not a move-in inspection completed with them by the landlord but they did do a move-out walk-through with the landlord on September 25, 2010. The tenants did not agree to have the landlord keep any portion of the security deposit and provided the landlord with their forwarding address, in writing, on September 25, 2010. The tenants are requesting double the security deposit.

The tenant's have submitted into evidence 2 notes from the landlord; the first states 'this is to verify that the above vacated the rental premise in clean & satisfactory condition'; the second states 'please find certified payment of your deposit with deductions of \$50 late payment, \$100 guest fee'.

The landlord testified that the tenants were to pay him \$50.00 for the inconvenience of having their son stay with them for a month. The landlord also stated that he deducted from the tenant's security deposit; a \$50.00 'late fee' because it took 2 weeks for the tenant's cheque to clear the bank and a \$100.00 'extra person for month fee' for the tenant's son being in the suite for a month.

It must be noted that 22 minutes into the hearing the landlord stated that he 'had enough' and disconnected from the call.

## Analysis

### Residential Tenancy Act Section 38 **Return of security deposit and pet damage deposit**

- (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.
- (2) Subsection (1) does not apply if the tenant's right to the return of a security deposit or a pet damage deposit has been extinguished under section 24 (1) *[tenant fails to participate in start of tenancy inspection]* or 36 (1) *[tenant fails to participate in end of tenancy inspection]*.
- (3) A landlord may retain from a security deposit or a pet damage deposit an amount that
- (a) the director has previously ordered the tenant to pay to the landlord, and
- (b) at the end of the tenancy remains unpaid.
- (4) A landlord may retain an amount from a security deposit or a pet damage deposit if,
- (a) at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant, or**
- (b) after the end of the tenancy, the director orders that the landlord may retain the amount.
- (5) The right of a landlord to retain all or part of a security deposit or pet damage deposit under subsection (4) (a) does not apply if the liability of the tenant is in relation to damage and the landlord's right to claim for damage against a security deposit or a pet damage deposit has been extinguished under section 24 (2) *[landlord failure to meet start of tenancy condition report requirements]* or 36 (2) *[landlord failure to meet end of tenancy condition report requirements]*.
- (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.**

(7) If a landlord is entitled to retain an amount under subsection (3) or (4), a pet damage deposit may be used only for damage caused by a pet to the residential property, unless the tenant agrees otherwise.

(8) For the purposes of subsection (1) (c), the landlord must use a service method described in section 88 (c), (d) or (f) [service of documents] or give the deposit personally to the tenant.

## Residential Tenancy Regulation Section 7 **Non-refundable fees charged by landlord**

(1) A landlord may charge any of the following non-refundable fees:

- (a) direct cost of replacing keys or other access devices;
- (b) direct cost of additional keys or other access devices requested by the tenant;
- (c) a service fee charged by a financial institution to the landlord for the return of a tenant's cheque;
- (d) subject to subsection (2), an administration fee of not more than \$25 for the return of a tenant's cheque by a financial institution or for late payment of rent;**
- (e) subject to subsection (2), a fee that does not exceed the greater of \$15 and 3% of the monthly rent for the tenant moving between rental units within the residential property, if the tenant requested the move;
- (f) a move-in or move-out fee charged by a strata corporation to the landlord;
- (g) a fee for services or facilities requested by the tenant, if those services or facilities are not required to be provided under the tenancy agreement.

**(2) A landlord must not charge the fee described in paragraph (1) (d) or (e) unless the tenancy agreement provides for that fee.**

## Residential Tenancy Regulation Section 5 **Prohibited fees**

(1) **A landlord must not charge a guest fee, whether or not the guest stays overnight.**

(2) A landlord must not charge a fee for replacement keys or other access devices if the replacement is required because the landlord changed the locks or other means of access.

Based on the documentary evidence and undisputed testimony of the tenants, I find on a balance of probabilities that the tenants have met the burden of proving that they have grounds for entitlement to return of double the security deposit.

Security Deposit	\$425.00
Late Fee	-\$50.00
Extra Person Fee	-\$100.00
Balance Paid to Tenants	\$275.00
Withheld Amount X 2	\$300.00



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Additional Base Amount	\$425.00
<b>Amount Due to Tenants</b>	<b>\$725.00</b>

I find that the tenants have established a monetary claim for \$725.00 for return of double the security deposit. .

The tenant's are entitled to recovery of the \$50.00 filing fee.

## Conclusion

I find that the tenants have established a monetary claim for \$725.00 in return of double the security deposit. The tenants are also entitled to recovery of the \$50.00 filing fee.

A monetary order in the amount of **\$775.00** has been issued to the tenants and a copy of it 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: December 22, 2010

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Dispute Resolution Officer