



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **Decision**

**Dispute Codes:** MNSD, FF

### **Introduction**

This hearing dealt with the tenants' application for the double return of the security deposit / and recovery of the filing fee. Both parties participated in the hearing and gave affirmed testimony.

### **Issues to be decided**

- Whether the tenants are entitled to either or both of the above under the Act

### **Background and Evidence**

Pursuant to the first of two written tenancy agreements, the fixed term of tenancy was from March 1, 2010 to February 28, 2011. Monthly rent was \$1,650.00 and was payable in advance on the first day of each month. A security deposit of \$1,200.00 was collected, and a move-in condition inspection and report were completed.

Later, the tenants concluded that as the rent was \$1,650.00, the permitted amount of the security deposit is \$825.00, or 50% of the monthly rent. Accordingly, the tenants calculated there had been an overpayment of \$375.00 (\$1,200.00 - \$825.00).

Thereafter, the tenants withheld \$375.00 from the payment of rent for October 2010, such that rent paid for that month was limited to \$1,275.00 (\$1,650.00 - \$375.00).

As one of the tenants named on the original tenancy agreement moved out, and was replaced by another tenant, a new tenancy agreement was entered into for the period from June 1, 2010 to February 28, 2011. The tenants named in this application include one of the original tenants ("JQ") and the tenant who moved into the unit effective June 1, 2010 ("LP").

A move-out condition inspection and report were completed on March 1, 2011, and the tenants provided their forwarding address in writing on the move-out condition report at that time. There is a dispute around whether the tenants subsequently received a copy of the move-out condition inspection report, the tenants claiming that they did not, and the landlords claiming that they did.

On March 16, 2011, a neighbour delivered to the tenants a cheque reimbursement by the landlords of a portion of the security deposit in the amount of \$55.61. Included with the cheque were miscellaneous receipts for cleaning and repairs apparently undertaken in the unit by the landlord after the end of tenancy.

In their documentary submission the tenants consented to the landlords' retention from the security deposit of utilities totaling \$226.59. Further, during the hearing the tenants agreed to the landlords' retention of additional amounts as follows:

\$50.00: cleaning

\$112.00: closet related repairs

\$27.00: door stop

In summary, the total amount agreed to by the tenants for withholding from the security deposit totals \$415.59 ( $\$226.59 + \$50.00 + \$112.00 + \$27.00$ ). The balance of the security deposit still owed to the tenants therefore becomes \$409.41 ( $\$825.00 - \$415.59$ ). Reducing this amount by the amount already returned to the tenants of \$55.61, leaves a net balance of \$353.80 still owed ( $\$409.41 - \$55.61$ ).

Pursuant to the relevant statutory provisions, the tenants seek the double return of the outstanding balance of the security deposit, in addition to recovery of the filing fee.

### **Analysis**

The full text of the Act, Regulation, Residential Tenancy Policy Guidelines, Fact Sheets, forms and more can be accessed via the website: [www.rto.gov.bc.ca/](http://www.rto.gov.bc.ca/)

Section 38 of the Act addresses **Return of security deposit and pet damage deposit**, and provides in part as follows:

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.

Further, section 38(6) provides:

38(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.

Based on the documentary evidence and testimony of the parties, I find that the tenants provided the landlords with their forwarding address in writing on March 1, 2011. Accordingly, the landlords' subsequent repayment of \$55.61 of the security deposit on March 16, 2011 occurred on the 15<sup>th</sup> day.

The remaining balance of the security deposit in the amount of \$353.80, as calculated above, has not been repaid. As the landlords did not seek to retain any portion of the security deposit by filing an application for dispute resolution, pursuant to the above statutory provisions I find that the tenants have established entitlement to the double return of the unreturned balance of the security deposit in the total amount of \$707.60 (\$353.80 x 2).

As the tenants have succeeded in their claim, I find they are also entitled to recover the \$50.00 filing fee, bringing their total entitlement to \$757.60 (\$707.60 + \$50.00).

### **Conclusion**

Following from all of the above and pursuant to section 67 of the Act, I hereby issue a **monetary order** in favour of the tenants in the amount of **\$757.60**. Should it be necessary, this order may be served on the landlords, filed in the 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*.

DATE: June 30, 2011

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Residential Tenancy Branch