



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes                      MNSD, MNDC, FF, O

### Introduction

This hearing dealt with an Application for Dispute Resolution by the tenants to obtain a Monetary Order for the return of their security deposit and pet deposit and for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulation or tenancy agreement. The tenants also seek to recover the cost of the filing fee.

Service of the hearing documents, by the tenants to the landlord, was done by Purolator service and the tenants have provided a receipt showing the landlord was served the hearing documents on April 01, 2011. The tenants did not serve the landlord with these documents in accordance with section 89 of the *Act*; however as the tenants have provided proof of service for these documents I am satisfied that the landlord has been sufficiently served for the purposes of this *Act* pursuant to s. 71 of the *Act*.

The tenants appeared, gave sworn testimony, were provided the opportunity to present their evidence orally, in writing, and in documentary form. There was no appearance for the landlord despite being served notice of this hearing in accordance with the *Residential Tenancy Act*. All of the testimony and documentary evidence was carefully considered.

### Issue(s) to be Decided

- Are the tenants entitled to recover their security deposit and pet deposit?
- Are the tenants entitled to a Monetary Order for money owed or compensation for damage or loss?



### Background and Evidence

The tenants testify that when they viewed this mobile home there was garbage everywhere. The state they signed a rent to own agreement with the landlord that they would rent the mobile home for three years from November 01, 2010. The tenant's testify that the landlord assured them that the mobile home would be habitable and all the garbage would be cleared from the site. The landlord told them they could move in earlier as she was moving out. The tenant's state they asked to meet the landlord at the mobile home but she was reluctant to do that so arranged to meet them elsewhere and at that time the tenants paid part of the security deposit of \$350.00. The tenant's state at that meeting the landlord told them that everything was fine and the mobile home would be ready for them to move into.

The tenant's testify that after that meeting they did not hear from the landlord again and eventually they went to visit her at the mobile home park. Upon their arrival it was evident that the landlord had not made any attempts to clear away the excessive garbage. When they again asked the landlord if the mobile home would be habitable for them she told them that she no longer had access to the truck she was going to use to remove the garbage. The tenants estimate that at that time there was garbage equal to a half ton truck load. The tenant's testify that they agreed they would remove the garbage that was there as long as the interior of the mobile home was habitable. The tenants paid the rest of the security deposit and pet deposit of \$250.00 and \$150.00.

The tenant's testify that some time later the landlord phoned them and said she was leaving earlier then planned and did they want to pick up the keys from her. The tenant states she asked the landlord again if everything was done and she states the landlord told her she would pay them \$250.00 to remove the garbage. The tenant states during that conversation the landlord did not appear keen to have them visit the mobile home.

The tenants state this rang alarm bells with them and they went back to the mobile home and found approximately three times the original amount of garbage. They state the landlord told them not to worry as she would take some and the tenants could do the rest. The landlord told them she would call them later. By 9.30 that night they state they had not heard from the



landlord. On October 19, 2010 they returned to the mobile home park and the landlords were leaving the park and did not stop to talk to them. When they got to the mobile home the situation was much worse with even more garbage accumulated. When they entered the mobile home they testify there was an overpowering smell of pot, something had also been blown up in the oven, the fridge was turned off and left with rotting food, the back door had been broken, there was no lock and the screen door was broken. The tenants state no attempt had been made to clean the mobile home and there were bugs present in the home. In the tenants written submissions they also claim they had to notify the park manager and BC Hydro to cut off the power due to a risk of fire in the mobile home

The tenants state the unit was clearer not habitable. They state this put them in a difficult position as they had already sublet their condo and they now only had two days to find a new home. The tenants state they went to social services and were advised to file an application with RTB. Due to the landlords actions and neglect of the mobile home and site the tenant's state there were put in a position where they were effectively homeless. The tenant's testify that they had to make a decision to move to the female tenants' parents' home in Calgary. They state because of this they incurred additional costs which they would not have incurred if they had been able to move into the mobile home. The tenants state they had to rent a U-Haul truck at a cost of \$485.99 as the original moving truck they had booked to move them into the mobile home would have been far more expensive to move their belongings to Calgary (no receipt). They seek to recover the cost of \$160.00 for two Greyhound bus tickets for her parents to come out to help them with the drive over the mountain in two vehicles (receipt). They seek to recover the cost of mileage, worked out using the government mileage rates at 685 kilometres at \$0.52 to a sum of \$356.20, for the tenants car (no receipts); Meals for the journey for four people worked out using the government rates at \$140.00; a meal allowance total of \$62.75; incidental expense allowance of \$17.50 (no receipts) and gas for the U-Haul truck of \$200.00 (receipts for \$295.00).

The tenants also seek to recover their security deposit and pet deposits. The tenants testify that they sent the landlord their forwarding address in writing with a summary of why they could not move into the mobile home and a request for the return of their deposits. This letter was sent by registered mail on January 12, 2011 and a copy of the letter and registered mail receipts have



been provided in evidence.

The tenants also seek to recover their \$50.00 filing fee from the landlord.

### Analysis

The landlord did not appear at the hearing to dispute the tenants claims, despite having been given a Notice of the hearing; therefore, in the absence of any evidence from the landlord, I have carefully considered the tenants documentary evidence and affirmed testimony before me.

With regard to the tenants claim for their security and pet deposits totaling \$750.00; S 38(1) of the *Act* says that a landlord has 15 days from the end of the tenancy agreement or from the date that the landlord receives the tenants address in writing to either return the security deposit to the tenant or to make a claim against it by applying for Dispute Resolution. If a landlord does not do either of these things and does not have the written consent of the tenant to keep all or part of the security deposit then pursuant to section 38(6) of the *Act*, the landlord must pay double the amount of the security and pet deposits to the tenant.

I find that the landlord did receive the tenants forwarding address in writing on January 17, 2011 as it was sent by registered mail it is deemed served five days after posting. As a result, the landlord had until February 01, 2011 to return the tenants security and pet deposits or apply for Dispute Resolution to make a claim against it. I find the landlord did not return the tenants security and pet deposits or file an application to keep them. Consequently, pursuant to section 38(6) of the *Act*, the landlord must pay the tenants double the amount of their security and pet deposits to a total sum of **\$1,500.00**.

With regard to the tenants claim for money owed or compensation for damage or loss; in this matter I have applied a test used for damage or loss claims to determine if the claimants have met the burden of proof in this matter:

- Proof that the damage or loss exists
- Proof that this damage or loss happened solely because of the actions or neglect of the respondent in violation of the Act or agreement



- Verification of the actual amount required to compensate for the claimed loss or to rectify the damage.
- Proof that the claimant followed S. 7(2) of the Act by taking steps to mitigate or minimize the loss or damage.

In this instance the burden of proof is on the claimants to prove the existence of the damage or loss and that it stemmed directly from a violation of the agreement or contravention of the Act on the part of the respondent. Once that has been established, the claimants must then provide evidence that can verify the actual monetary amount of the loss or damage. Finally it must be proven that the claimant did everything possible to address the situation and to mitigate the damage or losses that were incurred.

Having considered the documentary evidence and verbal testimony it is my decision that the tenants have met the burden of proof for part of their claim. The tenant's photographs show the excessive amount of garbage left at the mobile home site and the condition the interior of the mobile home was left in. S. 32 of the *Act* states: A landlord must provide and maintain residential property in a state of decoration and repair that

(a) complies with the health, safety and housing standards required by law, and

(b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

As the landlord has not complied with this section of the *Act* it is my decision that the mobile home was not suitable for occupation by the tenants and they were entitled to end their tenancy agreement. I further find the tenants suffered additional costs when they found they were unable to move into the mobile home. The tenants have testified that they had arranged a moving company to move their belonging to the mobile home but when they found they could not move in and had no where else to go they had to move to the tenants' parents home in another province. The tenants did not want to incur high moving costs so rented a U-Haul truck to move themselves and their belongings along with another vehicle owned by them. However the tenants have not met the burden of proof to show the actual cost of hiring this truck, therefore I limit their claim to a nominal amount of \$200.00 as I find they mitigated their loss by not paying the larger fees of using the previously arranged moving company.



With regard to the tenants claim for millage costs for their vehicle based on the government rates at 685 kilometers at \$0.52, the tenants must provide an actual cost of what their gas charges were for their own vehicle for driving to Calgary and cannot simply base this on the government employee rates. As the tenants have not provided any receipts for these gas payments they have not met the burden of proof in this matter and this section of their claim is dismissed.

With regards to the tenants claim for gas charges for the U-Haul truck, I find the tenants have provided gas receipts for this trip and may recover the sum of **\$295.00** from the landlord pursuant to s. 67 of the **Act**.

With regards to the tenants claim for meals for four people for this trip of two days, It is my decision that the tenants are not entitled to this cost as it has been based on a government employee plan for meal allowances and is not a true reflection of the actual costs incurred. I also find that the tenants would have to have eaten wherever they were and the landlord would not have to reimburse them for any food consumed. Consequently this section of the tenants claim is dismissed.

With regard to the tenants claim for a meal allowance total of \$62.75 and Incidental Expenses allowances of \$17.50; again the tenants have based this on a government employee rate and they are not entitled to recover these sums from the landlord. Consequently, this section of their claim is dismissed.

The tenants seek to recover the sum of \$160.00 for two Greyhound bus tickets for the tenant's parents to travel to the tenant's home to help them move their belongings to Calgary. It is my decision that this was the tenant's choice to do this and whether or not the tenant had a medical condition that prevented her driving across the mountains it is not the responsibility of the landlords to pay fees for the tenants parents to make this trip. Consequently this section of the tenants claim is dismissed.



As the tenants have been partially successful with their claim I find they are also entitled to recover the **\$50.00** filing fee from the landlord pursuant to s. 72 (1) of the Act. A Monetary Order has been issued to the tenants for the following amount:

Double the security and pet deposits	\$1,500.00
Gas charges for truck	\$295.00
<b>Subtotal</b>	<b>\$1,995.00</b>
Plus filing fee	\$50.00
<b>Total amount due to the tenants</b>	<b>\$2,045.00</b>

### Conclusion

I HEREBY FIND in favor of the tenant's monetary claim. A copy of the tenant's decision will be accompanied by a Monetary Order for **\$2,045.00**. The order must be served on the respondent and is enforceable through the Provincial Court 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: July 13, 2011.

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Residential Tenancy Branch