



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Dispute Codes**

Tenants: MNSD, FF  
Landlord: MND, FF

### **Introduction**

This matter dealt with an application by the Tenants for the return of a security deposit and pet damage deposit plus compensation equal to the amount of those deposits due to the Landlord's alleged failure to return them as required by the Act. The Tenants also applied to recover the filing fee for this proceeding. The Landlord applied for compensation for damage to the rental unit and to recover the filing fee for this proceeding.

The Landlord filed his application on July 22, 2011 and at that time appointed an agent, B.W., to act on his behalf at the hearing. The Tenant, C.J., said on September 16, 2011, she served both the Landlord and his agent with the Application and Notice of Hearing (the "hearing packages") by registered mail. According to the Canada Post online tracking system, both the Landlord and his agent received the Tenants' hearing packages on September 21, 2011 and September 19, 2011 respectively.

Section 59(3) of the Act says that an application must be served on the other party 3 days after it is filed. The Tenants filed their application on August 16, 2011. The Tenant, C.J., said she filed her application through a Service B.C. office but did not receive a call to pick up the hearing packages. As a result, C.J., said she contacted the Service B.C. office and was advised by an agent of that office that the Residential Tenancy Office could not contact her at the telephone number she provided. The Tenant said an agent of the Service B.C. office tried the telephone number she provided without any problem. Consequently, the Tenant said she obtained the permission of the Residential Tenancy Branch to serve the hearing packages once she received them. Based on the evidence of the Tenants, I find that the Landlord was served with the Tenants' hearing packages as required by s. 89 of the Act.

The Tenant admitted that she received a copy of the Landlord's application in this matter. The *oral hearing* via teleconference started at 11:00 a.m. as scheduled however by 11:10 a.m. neither the Landlord nor anyone on his behalf had dialled into the conference call. The Landlord provided some documentary evidence in support of his application, however I find that it hearsay evidence and unreliable. In the absence of any oral evidence from the Landlord, I find that there is insufficient evidence to support his application and it is dismissed without leave to reapply.

Issue(s) to be Decided

1. Are the Tenants entitled to the return of a security deposit and pet damage deposit and if so, how much?

Background and Evidence

This one year fixed term tenancy started on April 1, 2010 and ended on June 30, 2011 when the Tenants moved out. Rent was \$1,500.00 per month. The Tenants paid a security deposit of \$750.00 and a pet damage deposit of \$750.00 at the beginning of the tenancy. The Tenants said they signed a written tenancy agreement but never received a copy of it from the Landlord.

The Tenants said they also completed a move in condition inspection report with the Landlord and a move out condition inspection report with an agent of the Landlord but never received a copy of those documents. The Tenant also said they gave their forwarding address in writing to the Landlord via e-mail on June 19, 2011. The Tenants further said they did not give the Landlord written authorization to keep their security deposit and pet damage deposit and those deposits have not been returned to them.

Analysis

Section 38(1) of the Act says that a Landlord has 15 days from either the end of the tenancy or the date he receives the Tenant's forwarding address in writing (whichever is later) to either return the Tenant's security deposit and pet damage deposit or to make an application for dispute resolution to make a claim against them. If the Landlord does not do either one of these things and does not have the Tenant's written authorization to keep the security deposit or pet damage deposit then pursuant to s. 38(6) of the Act, the Landlord must return double the amount of the security deposit and pet damage deposit.

Sections 24(2) and 36(2) of the Act say that if a Landlord does not complete a move in or a move out condition inspection report in accordance with the Regulations, the Landlord's right to make a claim against the security deposit and pet damage deposit for damages to the rental unit is extinguished. In other words, the Landlord may still bring an application for compensation for damages however he may not offset those damages from the security deposit or pet damage deposit. I find that the Landlord did not provide the Tenants with a copy of the move in or the move out condition inspection reports as required by section 18 of the Regulations to the Act and therefore his right to keep the security deposit and pet damage deposit for damages to the rental unit was extinguished pursuant to s. 24(2) and s. 36(2) of the Act.

I find that the Landlord received the Tenants' forwarding address in writing on June 19, 2011 and that the tenancy ended on June 30, 2011. Consequently, the Landlord had ***until July 15, 2011 at the latest*** to either return the Tenants' security deposit and pet damage deposit or to file an application for dispute resolution to make a claim against those deposits for something other than damages to the rental unit. ***The Landlord filed an application for dispute resolution on July 22, 2011*** which included a claim for a loss of rental income in the amount of \$1,500.00. However, I find that the Landlord filed this claim outside of the 15 day time limit required under s. 38(1) of the Act and his application did not include a claim to keep the security deposit and pet damage deposit.

I also find that the Landlord did not have the Tenants' written authorization to keep the security deposit of \$750.00 or pet damage deposit of \$750.00 and has not returned them to the Tenants. As a result, I find pursuant to s. 38(6) of the Act, the Landlord must return double the amount of the security deposit or \$1,500.00 and double the amount of the pet damage deposit or \$1,500.00 to the Tenants. I also find that the Tenants are entitled pursuant to s. 72(1) of the Act to recover from the Landlord the \$50.00 filing fee they paid for this proceeding.

### Conclusion

The Landlord's application is dismissed without leave to reapply. A Monetary Order in the amount of **\$3,050.00** 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: October 31, 2011.

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Residential Tenancy Branch