



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNSD, FF

### Introduction

This hearing dealt with an application for Dispute Resolution by the tenants seeking the return of their security deposit and recovery of the filing fee.

The parties appeared and the hearing process was explained.. Thereafter all parties gave affirmed testimony, were provided the opportunity to present their evidence orally and in documentary form prior to the hearing, and respond each to the other and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence **relevant** to the issues and findings in this matter are described in this Decision.

### **Preliminary Issue:**

The landlord's agent stated that he faxed evidence to the Residential Tenancy Branch a day or two before the hearing; however the evidence was not in the file on the day of the hearing. Additionally, the landlord's agent stated that the evidence had not been sent to the tenants, as required under section 4.1 of the Residential Tenancy Branch Rules of Procedure. I therefore declined to review the landlord's evidence when and if it was received prior to the Decision being made.

### Issue(s) to be Decided

Has the landlord breached the tenancy agreement, Residential Tenancy Act (the "Act") and regulations entitling the tenants to the return of double their security deposit and to recover the filing fee?

### Background and Evidence

This month to month tenancy began in September 2010. Tenant GE vacated the rental unit in May 2011, and tenant AA vacated the rental unit on or about August 25, 2011.

I heard testimony that rent was \$400.00 per month per tenant, until tenant GE, vacated, at which time total monthly rent for the rental unit was \$500.00.

The tenants paid a security deposit of \$400.00 at the beginning of the tenancy.

The tenants submitted that the landlord knew their forwarding address on the day tenant AA moved, due to the landlord and landlord's agent helping them move to their new address. Additionally the tenant stated she sent the landlord a text message with the forwarding address.

The landlord's agent acknowledged that the security deposit had not been returned to the tenants, as the tenants failed to clean the carpet as well as causing the one year old washing machine to break down. The landlord's agent also submitted that the tenants owed them for other costs as well.

Upon query, the landlord's agent confirmed knowing the tenants' forwarding address on the day they moved from the rental unit, as well as upon receiving the tenants' application by registered mail within 5 days of September 13, 2011.

There was no move-in or move-out condition inspection report.

### Analysis

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

Due to the landlord's agent confirmation, I accept that the landlord knew the tenants' written forwarding address no later than September 18, 2011 and did not return the security deposit or make an application to retain the security deposit within 15 days.

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 therefore grant the tenants' application for Dispute Resolution and order that the landlord pay the tenants double their security deposit.

Having granted the tenants' application, I also grant the tenants' request to recover the filing fee paid for submitting this application from the landlord. I find that the tenants have established a total **monetary claim** for the sum of **\$850.00**, comprised of the tenants' security deposit of \$400.00, doubled, and the filing fee of \$50.00.

### Conclusion

I grant the tenants' application and have issued a monetary Order for the sum of **\$850.00**.

I am enclosing a monetary order for \$850.00 with the tenants' Decision. This order is a **legally binding, final order**, and it may be filed in the Provincial Court of British Columbia (Small Claims) should the landlord fail to comply with this monetary order.

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 02, 2011.

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Residential Tenancy Branch