



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes: MNDC, MNSD, FF

### Introduction

This hearing was scheduled in response to the tenants' application for a monetary order as compensation for damage or loss under the Act, Regulation or tenancy agreement / compensation for the double return of the security deposit / and recovery of the filing fee. Both parties participated in the hearing and gave affirmed testimony.

### Issue(s) to be Decided

Whether the tenants are entitled to any of the above under the Act, Regulation or tenancy agreement.

### Background and Evidence

Pursuant to a written tenancy agreement, a copy of which is not in evidence, the fixed term of tenancy was from October 1, 2010 to November 30, 2011. Monthly rent of \$1,100.00 was payable in advance on the first day of each month, and a security deposit of \$550.00 was collected. A move-in condition inspection report was completed on September 27, 2010.

By letter dated October 17, 2011, the tenants gave notice to end the tenancy effective November 30, 2011, and provided the landlord with their forwarding address. While a walk-through of the unit was completed with the participation of both parties on November 29, 2011, a move-out condition inspection report was not completed. On that occasion the tenants orally authorized the landlord to withhold from the security deposit the costs associated with burnt out light bulbs and a shower drain cover.

The next day, on November 30, 2011, in the absence of the tenants the landlord undertook another walk-through of the unit. At that time the landlord identified other concerns with the condition of the unit which had not been identified during the walk-through with the tenants on the previous day. In short, the landlord withheld \$74.83 from the security deposit and sent a cheque to the tenants for the balance of \$475.17. (\$550.00 - \$74.83). The landlord's calculation of \$74.83 is as follows:

\$60.00: 3 hours of labour @ \$20.00 per hour

\$14.83: costs related to burnt out light bulbs and a shower drain cover

While the tenants agree to the withholding of \$14.83, they object to the landlord's unauthorized withholding of anything more, and they seek compensation arising from application of the relevant statutory provisions to the circumstances of the dispute.

### 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 35 of the Act addresses **Condition inspection: end of tenancy**. Section 36 of the Act speaks to **Consequences for tenant and landlord if report requirements not met**, and provides in part:

36(2) Unless the tenant has abandoned the rental unit, the right of the landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord

(c) having made an inspection with the tenant, does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.

Section 38 of the Act speaks to **Return of security deposit and pet damage deposit**, and provides in part:

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.
- (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 a 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.

Based on the documentary evidence and testimony of the parties, I find that the landlord did not complete a move-out condition inspection report, did not obtain written consent from the tenants to withhold any particular amount from the security deposit, and did not apply for dispute resolution within 15 days after the end of tenancy. Despite the foregoing, the tenants agree to the landlord's withholding of \$14.83 pursuant to their oral consent.

Following from the above, I find that the tenants have established entitlement to the double return of their security deposit calculated to be \$1,100.00 (2 x \$550.00), in

addition to recovery of the \$50.00 filing fee. This entitlement in the total amount of \$1,150.00 (\$1,100.00 + \$50.00) is reduced by \$490.00 which is calculated as follows:

\$ 14.83: amount orally agreed to by the tenants for withholding

\$475.17: amount already repaid to the tenants

In the result, I find that the tenants have established entitlement to a monetary order in the amount of \$660.00 (\$1,150.00 – \$490.00).

### Conclusion

Pursuant to section 67 of the Act, I hereby issue a **monetary order** in favour of the tenants in the amount of **\$660.00**. Should it be necessary, this order may be served on the landlord, 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*.

Dated: March 13, 2012.

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Residential Tenancy Branch