



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

### Dispute Codes

For the tenant: MNSD, MNDC, FF  
For the landlords: MNSD, MNDC, MND

### Introduction

This hearing was convened as a result of the cross applications of the parties for dispute resolution under the Residential Tenancy Act (the "Act").

The tenant applied for a return of her security deposit, doubled, a monetary order for money owed or compensation for damage or loss and for recovery of the filing fee.

The landlords applied for authority to retain the tenant's security deposit, a monetary order for money owed or compensation for damage or loss and damage to the rental unit.

The hearing process was explained to the parties and an opportunity was given to ask questions about the hearing process. Thereafter the parties gave affirmed testimony, were provided the opportunity to present their evidence orally and in documentary form prior to the hearing, and make submissions to me.

The parties acknowledged receipt of the other parties' evidence.

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.

### Issue(s) to be Decided

Is the tenant entitled to a monetary order pursuant to sections 38, 67 and 72 of the Act?

Are the landlords entitled to a monetary order pursuant to sections 38 and 67 of the Act?

### Background and Evidence

This one year, fixed term tenancy began on August 1, 2009, continued thereafter on a month to month basis until it ended on November 30, 2011, monthly rent was \$2050.00 and the tenant paid a security deposit of \$1025.00 at the beginning of the tenancy.

I also heard undisputed testimony that the tenant served as property manager for the landlords for the rental unit beginning August 2005, and then continued her property manager duties throughout the tenancy. I heard undisputed testimony that the tenant's property manager duties ended the last day of the tenancy.

**Tenant's application:**

The tenant submitted that there was no move-in or move-out condition inspection report and that she was not offered an opportunity for the same.

The tenant submitted that she provided the landlords her forwarding address in at least two email transmissions, and to date has not received the return of any or all her security deposit.

The tenant contended that she took excellent care of the rental unit and that she neither caused the damage nor was negligent in allowing any alleged damage.

The landlord acknowledged that she received the tenant's forwarding address in at least two email transmissions and additionally stated that independent of these receipts, she was aware of the tenant's forwarding address.

Analysis

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

**Tenant's application-**

Although the tenant communicated her forwarding address in an email transmission, I accept that this method of communication was the preferred method of communication between the parties, as demonstrated by the evidence of the parties and due to the landlords living out of province. The landlord also acknowledged that she received the forwarding address of the tenant via email prior to the end of the tenancy, on November 13, 2011.

Section 88 of the Act does not recognize email transmission as an acceptable method of a delivery of documents.

However, section 71 of the Act permits that I may make an order that a document not served in accordance with section 88 was sufficiently served. The provision of section 71 is discretionary and in this case, due to the above reason, I order that the delivery of the tenant's forwarding address through email on November 13, 2011, sufficiently served.

Section 38(1) of the *Act* stipulates that if within 15 days after the later of: 1) the date the tenancy ends, and 2) the date the landlord receives the tenant's forwarding address in

writing, the landlord must repay the security deposit, to the tenant with interest or make application for dispute resolution claiming against the security deposit. In this case, as the tenancy ended on November 30, 2011, the landlords were required to return the tenant's security deposit or file for dispute resolution no later than December 15, 2011.

Based on the above, I find that the landlords failed to comply with Section 38(1) of the *Act* and therefore the tenant is entitled to a return of her security deposit, doubled, pursuant to Section 38(6) of the *Act*.

I find the tenant's application had merit and I award her recovery of her filing fee, in the amount of \$50.00.

I find the tenant has established a **monetary claim** in the amount of **\$2100.00**, comprised of her security deposit of \$1025.00, **doubled**, and \$50.00 for the filing fee.

#### **Landlords' application:**

Under section 38 (6) of the Act, a landlord may not make a claim against a tenant's security deposit if they have failed to comply with section 38 (1). As I have found that the landlords failed to comply with section 38 (1), I find that the landlords were not entitled to make a claim against the security deposit for damage to the rental unit and I therefore **dismiss** their application, **without leave to reapply**.

Alternatively, Sections 24 and 36 of the Act extinguishes the landlords' right to claim against the security deposit if the landlord fails to complete the condition inspection report in compliance with the Act. I do not accept that the tenant, acting as property manager, was responsible for supplanting the landlords/owners' responsibility by conducting her own move-in inspection without the owners' participation, as I do not find it reasonable that the tenant would act as both tenant and landlord in the same transaction. The landlord confirmed that there was no move-out inspection and that the tenant no longer acted as property manager.

Therefore had I not made the decision to dismiss the landlords' application for failure to comply with section 38(1), I would still make the decision to dismiss the landlords' application as their right to claim against the security deposit was extinguished for failure to conduct a condition inspection and/or offer the tenant at least 2 opportunities to inspect and to complete both a move-in and move-out condition inspection in compliance with Act and regulations.

As I have dismissed the landlords' application, I have issued the tenant a monetary order for the sum of **\$2100.00**, reflecting her successful monetary claim.

I am enclosing a monetary order for \$2100.00 with the tenant's Decision. This order is a **legally binding, final order**, and it may be filed in the Provincial Court of British Columbia (Small Claims) for enforcement should the landlords fail to comply with this monetary order.

Conclusion

The tenant is granted a monetary order for \$2100.00.

The landlords' application is dismissed, without leave to reapply.

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