



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes: MNDC, MNSD

### Introduction

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

### Issue(s) to be Decided

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

### Background and Evidence

A written tenancy agreement in evidence shows that the month-to-month tenancy began on March 15, 2010. Monthly rent of \$650.00 is shown as payable in advance on the first day of each month, and a security deposit of \$325.00 is shown as having been collected. There is no move-in condition inspection report in evidence.

Despite the above, Shelter Information documents suggest that monthly rent of \$375.00 was payable to the landlord by each tenant (monthly total: \$750.00), and that a security deposit of \$189.00 was collected. The landlord testified that she received monthly payments from the Ministry on behalf of the tenants in the total amount of \$750.00, and that she then made a cash payment of \$50.00 to each tenant. In this manner, the parties considered that monthly rent was indeed \$650.00, pursuant to the tenancy agreement (\$750.00 – [\$50.00 x 2]). As to the amount collected for security deposit, during the hearing the parties agreed that it was actually \$325.00.

Two previous hearings have been convened in disputes between these parties, respectively, on November 9, 2011 (file #781645) and January 3, 2012 (file # 785097), with decisions issued by the same dates. In the latter decision of January 3, 2012, an order of possession and a monetary order were issued in favour of the landlord.

The order of possession was made effective “not later than two (2) days after service.” Subsequently, on January 5, 2012 the landlord served the order of possession on the tenants. Then, after filing the order of possession in the Supreme Court of British Columbia, the landlord obtained a writ of possession dated February 1, 2012. On February 2, 2012, the landlord engaged the services of a bailiff, who removed the tenants and their possessions from the unit on that same date. There is no move-out condition inspection report in evidence.

The landlord also served the monetary order on the tenants on January 5, 2012 in the total amount of \$755.00. This is comprised of the landlord’s \$50.00 filing fee, in addition to rent in the total amount of \$705.00 for December 2011 and January 2012 combined.

Shelter Information documents dated January 12, 2012, appear to reflect a new agreement entered into by the parties commencing February 1, 2012, whereby each tenant pays rent of \$375.00 per month (total monthly rent \$750.00). However, as earlier noted, the tenants were removed from the unit on February 2, 2012. In the result, the tenants seek the return of what they consider is rent paid on their behalf by the Ministry for February 2012. The landlord testified that she received funds from the Ministry on January 25, 2012 in the combined total amount of \$800.00 (\$325.00 for female tenant “KLJ” and \$475.00 for male tenant “CLV”).

The documentary evidence includes manual notations akin to receipts, related to the disposition of the \$800.00 received by the landlord from the Ministry, as above. One of these is dated January 25, 2012 and notes that female tenant “KLJ” received a cash payment of \$60.00 from the landlord; another confirms that female tenant “KLJ” received \$80.00 cash from the landlord on February 3, 2012 “for part of rent and damage deposit.”

The tenants claim that they provided the landlord with their forwarding address in writing on February 6, 2012, by way of serving her on that same date with their application for dispute resolution and the notice of hearing. To date, however, the landlord has not returned their security deposit. In this regard, the landlord testified that the costs to her for miscellaneous cleaning and repairs required in the unit, were in excess of the amount of the security deposit.

Finally, the tenants seek compensation in the amount of \$50.00 per month over a 21 month period of the tenancy when they claim the landlord failed to provide adequate heating in the unit. The total amount of compensation sought is \$1,050.00 (\$50.00 x 21). The tenants testified that they took this concern to the landlord’s attention in writing only once in January 2011, approximately one year before tenancy ended. Otherwise,

the tenants claim that their concern about inadequate heat was addressed orally with the landlord on numerous occasions. A witness for the tenants testified that he found the unit “chilly” and even “cold” during times when he visited the unit. The parties presented conflicting testimony around whether or not the landlord had provided space heaters, the landlord claiming that she did not, the tenants claiming that she did. Documentary evidence submitted by the landlord includes a detailed “Financial and energy usage history” provided by the gas company. The parties appear to agree that a repair person was brought into the unit to address the heating on at least two occasions during the tenancy.

### 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)

### RENT

I find that the most recent Shelter Information documents are incompletely and inconsistently filled out. However, I find on a balance of probabilities that payments received by the landlord from the Ministry on January 25, 2012 in the total amount of \$800.00, were payments intended by the Ministry for February’s rent. As the tenants vacated the unit on February 2, 2012, I find that the tenants are entitled to a partial reimbursement of rent in the amount of **\$712.41**, which is calculated as follows:

$\$800.00 \text{ (monthly rent)} \div 29 \text{ (\# days in February)} = \$27.59 \text{ (daily rent)}$

$\$800.00 \text{ (monthly rent)} - \$27.59 \text{ (rent for first day of February)} = \$772.41$

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$\$772.41 \text{ (28 day reimbursement for February)} - \$60.00 \text{ (cash paid to tenant)} =$   
**\$712.41** (net entitlement).

### SECURITY DEPOSIT

Section 38 of the Act addresses **Return of security deposit and pet damage deposit**. In part, this section provides that within 15 days of the later of the date the tenancy ends, and the date the landlord receives the tenant’s forwarding address in writing, the landlord must either repay the security deposit or file an application for dispute resolution. If the landlord does neither, section 38(6) of the Act provides that the landlord may not make a claim against the security deposit and must pay the tenant double the amount of the security deposit.

Based on the documentary evidence and testimony, I find that the landlord received the tenants' forwarding address in writing on February 6, 2012, and that the landlord has neither returned the security deposit nor filed an application for dispute resolution within 15 days since February 6, 2012. Accordingly, as the parties agree that the original security deposit collected was \$325.00, I find that the tenants have established entitlement to the double return of their security deposit in the amount of \$650.00 (2 x \$325.00). This is reduced by \$80.00 which I find was paid by the landlord to the tenant in February 2012, leaving the net balance owed of \$570.00 (\$650.00 - \$80.00).

### HEAT

In regard to the tenants' claim for compensation arising from the allegedly inadequate provision of heat during the tenancy, as earlier noted, the tenants' written expression of concern was limited to only one occasion approximately one year before tenancy ended. Further to that, I find there are no applications for dispute resolution filed by the tenants during the tenancy, seeking for example, a reduction in rent for repairs, services or facilities agreed upon but not provided. Section 7 of the Act addresses **Liability for not complying with this Act or a tenancy agreement**, and provides in part:

7(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

In the absence of sufficient evidence to demonstrate that the tenants undertook to mitigate their loss in relation to heating concerns, I find on a balance of probabilities that they have not met the burden of proving entitlement to compensation. Accordingly, this aspect of their application is therefore dismissed.

### Conclusion

Pursuant to section 67 of the Act, I hereby issue a **monetary order** in favour of the tenants in the amount of \$1,282.41 (\$712.41 + \$570.00). 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: April 04, 2012.

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Residential Tenancy Branch