



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      For the landlord: MND, MNDC, MNSD, MNR  
For the tenants: MNDC, MNSD, FF

### 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 landlord applied for authority to retain the tenant's security deposit, a monetary order for unpaid rent, damage to the rental unit and for money owed or compensation for damage or loss and for recovery of the filing fee.

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

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.

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 tenant submitted that the only document she received in the registered mail envelope from the landlord was the Notice of Hearing. The tenant stated that she did not receive the landlord's application and did not know what was in the landlord's claim.

The landlord confirmed the tenant's statement, and stated that she was unaware that she was additionally required to serve her application on the tenants. Additionally the landlord sent the Notice of Hearing in one envelope, and not to each respondent, as required in the Residential Tenancy Branch Rules of Procedure.

Due to the landlord's failure to serve the tenants with her application as required under the Act and the Rules of Procedure, I dismiss the landlord's application, with leave to reapply.

**Preliminary Issue #2-** The landlord submitted that she had not received the tenants' application, further stating that she lived in the USA. The tenants responded by saying

that they sent their application to the address of the landlord as given to them by the Residential Tenancy Branch ("RTB") as the landlord had never provided them with her address, either on the tenancy agreement or any other method. I note that the tenancy agreement did not list the landlord's address and the address used by the tenants was the address listed by the landlord on her application.

I therefore find that the landlord was served in a manner complying with section 89 of the Act.

The hearing proceeded only on the tenants' application.

#### Issue(s) to be Decided

Are the tenants entitled to a monetary order for recovery of their security deposit, doubled and for other relief and for recovery of the filing fee?

#### Background and Evidence

This one year, fixed term began on June 1, 2011, monthly rent was \$1600.00 and the tenants paid a security deposit of \$800.00 prior to the start of the tenancy.

The tenants vacated the rental unit on March 31, 2012.

The tenant's monetary claim is \$4285.00 for a return of their security deposit, doubled, a month's rent compensation for the first month of the tenancy due to the alleged unliveable condition of the rental unit and the landlord's lack of repairs, reimbursement for lack of laundry facilities as provided in the tenancy agreement and the filing fee.

The tenant's relevant evidence included photographs of the rental unit prior to the tenants moving in, the tenancy agreement, email communication between the parties discussing the relevant issues such as lack of laundry facilities and the state of the rental unit and proof that the landlord failed to advertise the rental unit for re-rent at the end of the tenancy.

The tenant stated that the condition of the rental unit was a "disaster" when they moved in and was unliveable. The tenant stated that it was not apparent when they viewed the rental unit as it was at night and not yet empty.

The tenant said that they could not move into the rental unit until June 27, 2012, as they had to clean and repair the rental unit to make it liveable.

The tenant stated that the landlord eventually reimbursed the tenants' expenses spent in cleaning and repairing the rental unit, but that it took several months for payment.

The tenant stated that from October until the end of the tenancy, the landlord failed to provide a working washer and dryer, despite the landlord knowing how important the machines were to her family, which included a newborn.

The tenant estimated that each load of laundry cost \$5.00 as each load was \$2.00 for a wash and the dryer cost \$.25 for five minutes of dryer time. The tenant said a conservative estimate was an average of 7 loads of laundry a week.

The tenant stated that the landlord was provided their written forwarding address on the day they left and to date, the landlord has not returned their security deposit.

In response, the landlord stated that the tenants moved into the rental unit when the previous tenants vacated and that the only issues were a lack of cleaning and carpet cleaning. The landlord contended that she told the tenants to have the rental unit cleaned and she would pay for it and that the carpet was cleaned by June 6.

As to the other complaints of the tenants, the landlord stated she did not check her emails every day.

### Analysis

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

In a claim for damage or loss under the Act or tenancy agreement, the claiming party has to prove four different elements:

**First**, proof that the damage or loss exists, **second**, that the damage or loss occurred due to the actions or neglect of the respondent in violation of the Act or agreement, **third**, to establish the actual amount required to compensate for the claimed loss or to repair the damage, and **last**, proof that the claimant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed. In this case, the onus is on the tenants to prove damage or loss.

**Security Deposit**-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 after the end of the tenancy. In the event the landlord fails to comply with this requirement, then the landlord must pay the tenant double their security deposit.

In this case, the undisputed evidence of the tenant shows that the landlord received the tenant's written forwarding address no later than the last day of the tenancy, as shown by the landlord's application claiming against the security deposit within 3 days of the end of the tenancy. However, the landlord failed to serve the application upon the tenants, as required by section 89 of the Act. I therefore find that the landlord failed to complete the application process, effectively meaning she did not file her application.

As I have found that the landlord failed to return the tenants' security deposit or complete the application process within 15 days of the end of the tenancy, which was also the date the landlord received the tenants' written forwarding address, I therefore find that the tenants are entitled to a return of their security deposit, doubled. I find the tenants have established a monetary claim of \$1600.00, which is their security deposit of \$800.00, doubled.

**Loss of laundry facilities-** I find on a balance of probabilities that the email and invoice evidence supports that the tenants suffered a loss of a washing machine/dryer for 6 months, as alleged by the tenants and as provided for in the tenancy agreement. I also find that the tenants addressed this problem with the landlord numerous times, but that the landlord's response was to direct the tenants to find a suitable replacement themselves.

Although the tenant did not provide receipts of laundromat expenses, I find her testimony as to the exact costs of each load of laundry and dryer usage to be convincing and compelling. I accept that the tenants paid \$5.00 per load of laundry.

The tenants did not submit sufficient evidence that they used 7 loads of laundry per week; however, with having a newborn baby, I find 5 loads of laundry per week to be reasonable. I therefore find that the tenants have established a monetary claim of \$649.50 (5 loads of laundry per week @ \$5.00 per load = \$25.00 per week x 4.33 average weeks in a month = \$108.25 per month for 6 months).

**Reimbursement of first month's rent-** The landlord is required under section 32 of the Act to provide and maintain the residential property in a state of decoration and repair which complies with health, safety and housing standards required by law.

I accept that the rental unit was not in the state required by the Act; however, I find the tenants submitted insufficient evidence of sustaining a loss.

I therefore dismiss their monetary claim of \$1600.00, for reimbursement of the first month's rent.

I find the tenants' application had merit and I award them recovery of the filing fee of \$50.00.

### Conclusion

The landlord's application is dismissed, with leave to reapply.

The tenants have established a monetary claim of \$2299.50, comprised of their security deposit of \$800.00, doubled, in the amount of \$1600.00, loss of laundry facilities in the amount of \$649.50 and the filing fee of \$50.00. I have issued them a monetary order for that amount.

The monetary order for \$2299.50 is enclosed 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: June 14, 2012.

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Residential Tenancy Branch