



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      For the landlord: MND, MNSD  
                                 For the tenant: MNSD, FF

### Introduction

This hearing dealt with the cross applications of the parties for dispute resolution under the Residential Tenancy Act (the “Act”).

The landlord applied for authority to retain the tenants’ security deposit and a monetary order for damage to the rental unit.

The tenants applied for a return of their security deposit, doubled, and for recovery of the filing fee.

The landlord did not appear at the telephone conference call hearing; the tenants’ agent appeared, ready to proceed with the tenants’ application and to respond to the landlord’s application. The tenant’s agent will be referred to as the “tenant.”

The tenant testified, with supporting evidence, that the landlord was served with the tenants’ Application for Dispute Resolution and Notice of Hearing (the “Hearing Package”) by registered mail on June 22, 2012.

I find the landlord was served in a manner complying with section 89 of the Residential Tenancy Act (the “Act”) and the hearing proceeded in the landlord’s absence.

The tenant was provided the opportunity to present her evidence orally and to refer to documentary evidence timely submitted prior to the hearing.

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 matter:*

As the landlord failed to attend the telephone conference call hearing to present his claim, I dismiss the landlord’s application, without leave to reapply.

### Issue(s) to be Decided

Are the tenants entitled to a monetary order for the return of their security deposit, doubled, and to recover the filing fee?

### Background and Evidence

This tenancy began on June 1, 2010, ended on or about May 17, 2012, monthly rent was \$1100.00 and the tenants paid a security deposit of \$550.00 on May 24, 2010.

The tenant said that the tenants and family members cleaned the rental unit prior to vacating the rental unit on May 27, 2012 and provided the landlord with their written forwarding address on or about May 28, 2012. I note that the landlord also provided a copy of the written forwarding address with his evidence.

According to the tenant, the landlord has not returned any portion of the tenants' security deposit and there were no condition inspections at the beginning or the end of the tenancy.

The tenants have not agreed to allow the landlord to make any deductions from their security deposit.

### Analysis

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

As mentioned before, the landlord's application is dismissed without leave to reapply.

#### *Tenants' application:*

In the absence of the landlord, the tenant's testimony and evidence will be preferred.

In order to justify payment of loss under section 67 of the *Act*, the applicant/tenant is required to prove that the other party did not comply with the *Act* and that this non-compliance resulted in losses to the applicants pursuant to section 7.

In this case, the landlord filed an application for dispute resolution claiming against the tenants' security deposit for damage within 15 days after receiving the tenants' written forwarding address after the end of the tenancy.

However, under the *Act*, when a landlord fails to properly complete a condition inspection report, the landlord's claim against the security deposit for damage to the property is extinguished. Because the landlord in this case did not carry out move-in or move-out inspections or complete condition inspection reports, he lost his right to claim the security deposit for damage to the property.

The landlord was therefore required to return the security deposit to the tenants within 15 days of the later of the two of the tenancy ending and having received the tenants'

forwarding address in writing. The landlord received the tenants' forwarding address on May 28, 2012, but did not return the security deposit within 15 days of that date.

Because the landlord's right to claim against the security deposit for damage to the property was extinguished, and he failed to return the tenants' security deposit within 15 days of having received the tenants' written forwarding address, section 38 of the Act requires that the landlord pay the tenants double the amount of the deposit of \$550.00.

Due to their successful application, I also award the tenants recovery of their filing fee of \$50.00.

In the alternative, I would still make the decision to award the tenants double their security deposit as the landlord failed to appear to present his claim against the tenants. I find the Act contemplates that the mere making of the application, without anything further, such as appearing at the hearing on the application to present their claim, would not stay the requirement imposed on the landlord to return the security deposit at the end of the tenancy.

#### Conclusion

I find the tenants have established a monetary claim of \$1150.00, comprised of their security deposit of \$550.00, doubled, and recovery of their filing fee of \$50.00.

I therefore grant the tenants a final, legally binding monetary order in the amount of **\$1150.00**, which I have enclosed with the tenants' Decision.

Should the landlord fail to pay the tenants this amount without delay, the order may be filed in the Provincial Court of British Columbia (Small Claims) for enforcement against the landlord.

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: August 20, 2012.

---

Residential Tenancy Branch