



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      For the tenants: MNSD, FF  
For the landlord: MND, 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 tenants applied for a return of their security deposit, doubled, and for recovery of the filing fee.

The landlord applied for a monetary order for damage to the rental unit and for recovery of the filing fee.

The parties appeared, the hearing process was explained and they were given an opportunity to ask questions about the hearing process.

Thereafter all parties gave affirmed testimony, were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me.

At the outset of the hearing, the landlord confirmed that he had received the tenant's evidence; however the tenants said they had not received the landlord's evidence, which were photographs. Neither party raised any issues regarding service of the application.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure; however, I refer to only the relevant evidence regarding the facts and issues in this decision.

### Issue(s) to be Decided

Are the tenants entitled to a monetary order, which includes their security deposit, and for recovery of the filing fee?

Is the landlord entitled to a monetary order and for recovery of the filing fee?

### Background and Evidence

The parties agreed that this tenancy began on September 1, 2011, ended on May 31, 2012, monthly rent was \$1300.00 and the tenants paid a security deposit of \$600.00 on or about September 1, 2011.

The parties also agreed that there was no move-in or move-out condition inspection report or written tenancy agreement.

**Tenants' claim and evidence-**The tenants' monetary claim is \$1200.00, which is their security deposit, doubled.

The tenants stated that the landlord was provided their written forwarding address in a letter, dated April 28, 2012, hand delivered to the landlord at the rental unit. The tenants said that they thought a copy of the letter had been submitted into evidence; however, I could not locate a copy in the file. The tenant read the letter, which did contain the tenants' request for a return of their security deposit, a forwarding address and a notice to end the tenancy. The male tenant confirmed the contents of the letter.

The tenants said that they did not authorize the landlord to make any deductions from their security deposit and that the landlord has not returned any portion of their security deposit.

Throughout the hearing the landlord denied receiving the tenants' written forwarding address; however, near the end of the hearing, the landlord acknowledged that there was an address contained in the letter he received on April 28, 2012. The landlord contended that this address was a work address for the female tenant and not a residence address, which was not a legal address. Therefore the address did not qualify as a forwarding address.

**Landlord's claim and evidence-**The landlord's monetary claim is in the amount of \$2500.00.

The landlord claimed that the tenants put paint marks on the outside of the rental home, which will require that the entire home be repainted. The landlord pointed to his evidence, which was a quote for the painting and photographs of the rental home.

When questioned, the landlord acknowledged not having made any repairs as of the day of the hearing.

The tenants denied damaging the house; instead the paint was a result of 2 acts of vandalism, both reported to the police.

### Analysis

Based on the submitted relevant 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, both parties in this case, has to prove, with a balance of probabilities, 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**, verification of the actual loss or damage claimed and **fourth**, proof that the party took reasonable measures to mitigate their loss.

Where the claiming party has not met each of the four elements, the burden of proof has not been met and the claim fails.

**Tenants' application-** Under section 38 of the Act, at the end of a tenancy a landlord is required 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 the later of receiving the tenant's forwarding address in writing and the end of the tenancy. If a landlord fails to comply, then the landlord must pay the tenant double the security deposit.

In the case before me, the tenants said, and the landlord ultimately agreed, that the tenants provided an address to the landlord on April 28, 2012, and requested a return of their security deposit. There is no requirement that the address be the residence of the tenants. The undisputed testimony also showed that the tenants have not agreed to any deductions from their security deposit, the landlord did not apply for arbitration claiming against the security deposit within 15 days of the end of the tenancy, May 31, 2012, and has not returned any portion of the tenants' security deposit.

The landlord may only keep all or a portion of the security deposit through the authority of the Act, such as an order from a Dispute Resolution Officer, or with the written agreement of the tenants. Here the landlord did not have any such authority to keep

any portion of the security deposit. Therefore, I find that the landlord is not entitled to retain any portion of the security deposit, and under section 38 I must order the landlord to pay the tenants double their security deposit.

I therefore find the tenants have established a monetary claim in the amount of \$1200.00, which is double their security deposit of \$600.00.

I also allow the tenants to recover the filing fee of \$50.00.

### **Landlord's application-**

A key component in establishing a claim for damage is the record of the rental unit at the start and end of the tenancy as contained in condition inspection reports. Sections 23, 24, 35, and 36 of the Residential Tenancy Act deal with the landlord and tenant obligations in conducting and completing the condition inspections. In the circumstances before me the landlord has failed to meet his obligation under of the Act of completing the inspections resulting in extinguishment of the landlord's right to the tenants' security deposit. There is also no independent record of the condition of the rental unit at the start and end of the tenancy. Even had the landlord conducted an inspection as obligated, the landlord failed to provide a receipt showing that he had incurred a loss, step 3 of his burden of proof, as a quotation is not proof of a loss.

I also find that the landlord failed to provide proof that the tenants damaged the rental unit, as I accept the testimony of the tenants that vandals caused the damage.

I therefore find the landlord has submitted insufficient evidence to prove his claim for \$2500.00 and I dismiss his application, without leave to reapply.

As I have dismissed the landlord's application, I also decline to award him recovery of the filing fee.

### **Conclusion**

I find the tenants have established a total monetary claim in the amount of \$1250.00, comprised of their security deposit of \$600.00, doubled to \$1200.00, and recovery of the filing fee of \$50.00.

I therefore grant the tenants a final, legally binding monetary order in the amount of \$1250.00, which I have enclosed with the tenants' Decision.

Should the landlord fail to pay the amount of \$1250.00 without delay, the monetary order may be filed in the Provincial Court of British Columbia (Small Claims) for enforcement as an Order of that Court.

The landlord's 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: September 18, 2012.

---

Residential Tenancy Branch