



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      For the landlord: MNSD, MND, MNDC, FF  
For the tenants: 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 tenants’ security deposit, a monetary order for 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, 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, refer to documentary evidence timely submitted prior to the hearing, and make submissions to me.

At the outset of the hearing neither party raised any issues regarding service of the application or the evidence. I have reviewed all testimony and other evidence. However, only the evidence relevant to the issues and findings in this matter are described in this decision.

*Preliminary Issue:* The landlord submitted that this dispute did not involve a residential tenancy, in that the property in question was leased to the tenants as a vacation rental. In explanation, the landlord said that they lease out the property every year during the winter months while they are in a warm weather location.

The tenant submitted that this dispute was a residential tenancy matter in that she considered the lease a short term tenancy and that the landlords advertised the rental unit as such on the community bulletin board in the lobby of the residential property.

### Introduction

1. Is the landlord entitled to retain the tenants' security deposit, a monetary order and to recover the filing fee?
2. Are the tenants entitled to a monetary order for a return of their security deposit, doubled, and to recover the filing fee?
3. Does the Residential Tenancy Act apply to this dispute?

### Background and Evidence

A document entitled "Lease Agreement for (dispute address)" was entered into evidence by the landlord. The terms of the lease showed that the tenants agreed to rent the rental unit from December 1, 2011 to March 31, 2012, with the possibility of extending to April 30, 2012. The rental unit was furnished.

The tenants paid a security deposit of \$460.00.

The parties agree that there is no move-in or move-out condition inspection report.

**Landlord's claim and evidence-**The landlords' monetary claim is \$570.00, for cleaning, replacing of items, a laundry card, estimate for refinishing a table and the filing fee.

In support, the landlord said that when the tenants vacated the rental unit, there were missing items from the furnished rental unit and damage to a table. Additionally, the tenants failed to properly clean the rental unit, which required the landlord to expend 9 hours in cleaning.

The landlord's relevant evidence included photos of the rental unit and email communication between the parties.

**Tenant's response-**The tenant denied damaging the rental unit and that if any items went missing, they were returned.

**Tenant's claim and evidence-**The tenant's monetary claim is in the amount of \$970.00, comprised of their security deposit of \$420.00, doubled, and the filing fee of \$100.00.

The tenant said that she gave the landlord their forwarding address in an email message on May 1 and May 28 2012, and in a follow-up letter, sent registered mail, on July 22, 2012; however, to date, the landlord has not returned their security deposit.

The tenant gave evidence of the email message, with a corresponding response from the landlord.

**Landlord's response-**The landlord said that as this was not a typical tenancy situation and due to the tenants' damage and the missing items, she was of the understanding the security deposit did not have to be returned until all parties agreed on the amount.

The landlord agreed that she received the tenants' email message on May 1, 2012, containing the forwarding address.

I asked the landlord specifically if she knew of the tenants' forwarding address on May 1, 2012, and the landlord said, "Yes."

I also asked the landlord if the parties' usual method of communication was via email, to which the landlord again said, "Yes."

#### Analysis on Jurisdiction

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

In order for me to make a decision on the parties' application, I must first decide the issue raised by the landlord, that this dispute is excluded from the jurisdiction of the *Residential Tenancy Act* due to their contention that a residential tenancy never existed.

In considering whether or not a tenancy existed, under the Act, a landlord is defined as the owner of the rental unit, the owner's agent or another person who, on behalf of the landlord who permits occupation of the rental unit under a tenancy agreement.

Similarly a tenancy agreement means an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a rental unit, use of common areas and services and facilities, and includes a licence to occupy a rental unit.

Rent is money paid or value given or agreed to be given, by or on behalf of a tenant to a landlord in return for the right to possess a rental unit.

In the circumstances before me, I find that the landlords were the owners of the home in question at the time they allowed the tenant to occupy and that value was given by the tenants for the right to possess the rental unit in the form of rent payments and that the tenants paid a security deposit.

Therefore, upon a balance of probabilities, I accept that the parties had entered into a tenancy agreement, the rights and obligations of which are enforceable under the Residential Tenancy Act.

#### Analysis on the Parties' Applications

In a claim for damage or loss under the Act or tenancy agreement, the claiming party, both the landlords and tenants 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.

#### *Landlords' application-*

I find the landlord submitted insufficient evidence that the tenants left the rental unit in a state which required cleaning or damaged or that there were missing items from the rental unit.

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 landlords have failed to meet their obligation under of the Act of completing the inspections resulting in extinguishment of the landlords' 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 receipts showing that they have incurred a loss as the result of the tenants' actions or negligence.

I therefore find the landlords submitted insufficient evidence to prove their claim for \$570.00 and I dismiss their application, without leave to reapply.

As I have dismissed the landlords' application, I also decline to award them recovery of the filing fee.

*Tenants' application-*

When a landlord fails to properly complete a condition inspection report, the landlords' claim against the security deposit for damage to the property is extinguished. Because the landlords in this case did not carry out move-in or move-out inspections or complete condition inspection reports, they lost her right to claim the security deposit for damage to the property.

The landlords were 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.

In the case before me, the tenancy ended on or about May 1, 2012, and the tenants communicated their forwarding address in an email transmission on that day. I accept that this method of communication was the preferred method of communication between the parties, as demonstrated by the parties' evidence and the landlord's confirmation.

Although the Act does not recognize email transmission as an acceptable method of delivery of documents, I order that the delivery of the tenants' forwarding address through the May 1, 2012 email to the landlord, with the landlord's response, sufficiently served, pursuant to section 71 of the Act.

I additionally find that the tenants communicated their written forwarding address in a letter sent registered mail.

The landlord confirmed received the tenant's forwarding address on May 1, 2012, but did not return the security deposit within 15 days of that date.

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

I therefore find the tenants have proven their monetary claim of \$920.00 for recovery of their security deposit, which is required to be doubled.

As the tenants were successful in their application, I find they are entitled to recover the filing fee of \$50.00

### Conclusion

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

I find the tenants are entitled to a monetary award of \$970.00, comprised of their security deposit of \$460.00, doubled, and the filing fee of \$50.00.

I therefore grant the tenants a final, legally binding monetary order for the amount of \$970.00, which I have enclosed with the tenants' Decision.

Should the landlords fail to pay the tenants this amount 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.

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* and is being mailed to both the applicant/landlords and the applicant/tenants.

Dated: October 18, 2012.

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Residential Tenancy Branch