



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDC, MNSD, FF

### Introduction

This was the hearing of applications by the tenant and by the landlords. The tenant applied for the return of her security deposit including double the deposit amount. The landlords applied for compensation for the costs of removal and cleanup after the end of the tenancy. The hearing was conducted by conference call. The tenant and the named landlord participated in the hearing.

### Issue(s) to be Decided

Is the tenant entitled to the return of her security deposit including double the amount?

Is the tenant entitled to monetary compensation for the loss of a plant pot?

Are the landlords entitled to a monetary award for garbage removal and installation of a railing?

### Background and Evidence

The rental unit is a suite in a duplex in North Vancouver. The tenancy began on July 1, 2004. The tenant paid a security deposit of \$600.00 at the commencement of the tenancy. The tenancy ended on July 5, 2012 pursuant to a two month Notice to End Tenancy. The tenants gave the landlord their forwarding address on June 25, 2012. The tenants moved out on July 5, 2012

On July 10, 2012 the landlords sent the tenant a cheque in the amount of \$587.00, being the balance of the deposit and interest after deduction of the sum of \$35.00. The landlord deducted \$15.00 for the cost of removing and dumping some garbage and cast offs that they said belonged to the tenant. The landlords charged \$10.00 for reinstalling a balcony railing that was removed by the tenants when they moved. The landlords charged a further \$10.00 for removing a large flower pot. At the hearing the landlord testified that she has the flower pot at her house. The plant that was in the pot died and she has stored the clean and empty pot. The landlord confirmed that the tenant may come to pick up the pot from the landlord at her convenience.

### Analysis

Section 38 of the *Residential Tenancy Act* provides that when a tenancy ends, the landlord may only keep a security deposit if the tenant has consented in writing, or the landlord has an order for payment which has not been paid. Otherwise, the landlord must return the deposit, with interest if payable, or make a claim in the form of an Application for Dispute Resolution. Those steps must be taken within fifteen days of the end of the tenancy, or the date the tenant provides a forwarding address in writing, whichever is later. Section 38(6) provides that a landlord who does not comply with this provision may not make a claim against the deposit and must pay the tenants double the amount of the security deposit.

I am satisfied that the tenants provided the landlords with their forwarding address in writing, and I find that the tenants served the landlords with documents notifying the landlord of this application as required by the *Act*.

The majority of the tenants' security deposit was refunded within 15 days, but the landlord withheld \$350.00 without having the tenant's written agreement and without making an application for dispute resolution to claim the amount as required by section 38(1) of the *Residential Tenancy Act*. The landlords did not submit their application for dispute resolution to claim the amount until after they received the tenant's application claiming double the deposit. I find that the tenants are entitled to an award in the amount of double the security deposit that the landlords held after the expiry of the 15 day period; this was the sum of \$35.00. I grant the tenants' application and award them the sum of \$70.00, being double the amount of the security deposit held by the landlord after the 15 day period. The tenants have been partially successful and I award them \$25.00 of the \$50.00 filing fee for this application for a total claim of \$95.00. Their claim for compensation for the replacement cost of the pot is dismissed without leave to reapply. At the hearing the tenant confirmed arrangements to attend at the landlord's house to pick up the pot.

The landlords' claimed payment of \$15.00 for the cost of disposing of garbage that they claimed was abandoned by the tenants; they claimed \$10.00 to re-install a balcony railing removed by the tenants during their move-out. They claimed \$10.00 to remove the flower pot left by the tenants when they moved.

The tenant said that the items disposed of by the landlord were not the tenants' property and may have belonged to another occupant. The tenant acknowledged that the tenants took down the balcony railing, but she said that when they moved in the landlord took care of the balcony railing without charge and the tenants do not feel they

should have to pay for it on move-out. With respect to the pot, the tenant acknowledged that the pot was left at the rental unit on July 5<sup>th</sup> because it would not fit in the moving truck. When the tenant's husband returned to pick up the pot a few days later it was gone. The landlords confirmed that they have the pot and will give it to the tenants when they come to the landlord's house to retrieve it.

I find that the landlords have not proved on a balance of probabilities that the items they removed and disposed of belonged to the tenants; I therefore deny the claim for disposal costs. The tenants did not remove their large pot when they moved out of the rental unit and did not return for it until several days later. The tenants took down the balcony railing when they moved and I find they were obliged to restore the property to its former condition by putting the railing back afterwards. I find that the landlords are entitled to recover the \$10.00 charge for reinstalling the balcony railing and to the amount claimed for removal of the tenant's pot. The landlords have been partially successful in their application and I award them \$25.00 of the \$50.00 filing fee for a total award of \$45.00.

Pursuant to section 72 of the *Residential Tenancy Act*, I set off the award made to the landlords against the award granted to the tenants. This leaves a net amount due to the tenants of \$50.00 and I grant them a monetary order under section 67 in the said amount. This order may be registered 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: November 13, 2012.

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Residential Tenancy Branch