



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

### Dispute Codes

For the Tenants: MNSD, FF

For the Landlords: MND, 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 tenants applied for a return of their security deposit and for recovery of the filing fee.

The landlords applied for authority to retain the tenants' security deposit, a monetary order for damage to the rental unit and for recovery of the filing fee.

The tenants appeared; the landlords did not appear.

The tenants gave evidence that they served each landlord with the Application for Dispute Resolution and Notice of Hearing by registered mail on October 13, 2012. The tenants supplied testimony of the tracking numbers of each of the registered mail envelopes.

I find the landlords were served notice of this hearing in a manner complying with section 89 of the Residential Tenancy Act (the "Act") and the hearing proceeded on the tenants' application in the landlord's absence.

The tenants 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.

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.

*Preliminary Issue*-Despite having their own application for dispute resolution set for hearing on this date and time, the application of the tenants and the Notice of these Hearings, the landlords did not appear.

**Therefore, I dismiss the application of the landlords, without leave to reapply.**

Issue(s) to be Decided

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

Background and Evidence

The tenants gave evidence that this tenancy began May 1, 2012, ended on or about September 1, 2012, monthly rent began at \$1400.00, was reduced to \$1300.00, and that the tenants paid a security deposit of \$700.00 on or about April 21, 2012.

The tenants said that although there was a move-in inspection, the landlord failed to give them a copy of the condition inspection report. Additionally, the tenants said there was no move-out inspection.

The tenants said that they transmitted their written forwarding address in emails and texts to the landlord during the month of September 2012, and that the landlord failed to return their security deposit.

The male tenant submitted that as their attempts to have their security deposit returned during the month of September were unsuccessful, he finally made contact with the landlord via telephone on September 26, 2012, requesting the return of their security deposit. The tenant said that the landlord advised that he did not have sufficient funds to return the security deposit and that if he did so, he would suffer a financial hardship.

When questioned, the tenants said that their usual method of communication with the landlord was via email, texts, and voice mail.

Analysis

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

In the absence of the landlords to present their application and to respond to the tenants' application, I prefer the evidence of the tenants.

Under section 24 (2) and 36 (2) of the Act, a landlord is required to conduct a move-in and move-out inspection and complete a condition inspection report in accordance with

the Act and Regulations. The landlord is also required to give the tenants a copy of the report. In the event the landlord fails to comply with these sections, the landlord's right to make a claim against the tenants' security deposit is extinguished.

In the case before me, I accept the undisputed testimony of the tenants and I find the landlords failed to comply with their requirements of providing a condition inspection report to the tenants after the move-in inspection and failed to provide opportunities for a move-out inspection. I therefore find the landlords' right to make a claim against the security deposit had been extinguished and were therefore required to return the tenants' security deposit within 15 days of the end of the tenancy or receiving the tenants' written forwarding address, pursuant to section 38 of the Act. If a landlord fails to comply, then the landlord must pay the tenant double the security deposit.

In the case before me, I accept that the tenants' undisputed evidence that they communicated their forwarding address in email transmissions throughout September 2012. I accept that this method of communication was the preferred method of communication between the parties, as demonstrated by the tenant's evidence.

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 emails in mid September to the landlord sufficiently served, pursuant to section 71 of the Act. I reached this conclusion additionally as I find the respective applications of the parties were made online and were processed on the same day; therefore I concluded that the landlords were previously in receipt of the tenants' address prior to October 15, 2012, the date of the landlords' application, due to that address being used in the "respondent" portion of their application.

Residential Tenancy Branch Policy Guideline 17 requires that I order the return of double the security deposit if the landlord has claimed against the deposit for damage to the rental unit and the landlord's right to make such a claim has been extinguished under the Act.

Due to the above, as I have found that the landlords' right to make a claim against the security deposit had been extinguished and they failed to return the tenants' security deposit, I find the tenants are entitled to a monetary order for a return of their security deposit, doubled.

I allow the tenants recovery of their filing fee of \$50.00.

I find the tenants have proven a total monetary claim of \$1450.00, comprised of their security deposit of \$700.00, doubled, and recovery of the filing fee.

I therefore grant the tenants a final, legally binding monetary order in the amount of \$1450.00, 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.

### Conclusion

The tenants are granted a monetary order in the amount of \$1450.00.

The landlords' application for dispute resolution 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* and is being mailed to both the applicant and the respondent.

Dated: January 15, 2013

