



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Dispute Codes**

For the tenant: MNSD, FF  
For the landlord: 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 tenant applied for a return of her security deposit, doubled, and for recovery of the filing fee.

The landlord applied for authority to retain the tenant’s security deposit 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 relevant documentary evidence submitted prior to the hearing, and make submissions to me.

At the outset of the hearing, neither party raised any issue about service of their respective applications or the evidence.

I have reviewed all relevant oral and written evidence; however I refer to only the evidence relevant to the issues and findings in this decision.

### **Issue(s) to be Decided**

1. Is the tenant entitled to a return of her security deposit, doubled, and to recover the filing fee?
2. Are the landlords entitled to retain the tenant’s security deposit and to recover the filing fee?

### Background and Evidence

The undisputed evidence is that this tenancy began on May 1, 2007, ended on August 31, 2012, monthly rent was \$1000.00 and the tenant paid a security deposit of \$500.00 at the beginning of the tenancy.

The parties agreed that there is no move-in or move-out condition inspection report as required by the Residential Tenancy Act and that the landlords have not returned any of the tenant's security deposit.

#### *Tenant's application-*

The tenant's claim is for her security deposit of \$500.00, doubled, and for recovery of the filing fee.

In support of her application, the tenant said that she gave her written forwarding address to the landlord on September 24, 2012, in an email.

The tenant said that despite several requests, the landlord failed to return her security deposit, leading to her application being filed on November 2, 2012.

In response, when questioned, the landlord agreed that she received the tenant's forwarding address via email, at least by September 26, 2012.

The landlord confirmed not filing an application for dispute resolution until January 22, 2013.

#### *Landlord's application-*

The landlord's monetary claim totals \$500.00, which is their request to keep the tenant's security deposit to apply towards alleged damage to the carpet and paint.

Landlord DF said that he and the tenant had a walk-through of the rental unit at the end of the tenancy and that the tenant was well aware that they would be discussing carpet damage.

When questioned, the landlord said that the carpet and paint was new at the beginning of the tenancy and that the tenant damaged both.

The landlord's relevant evidence included email communication between the parties regarding reimbursement of tenant expenses incurred during the tenancy, the landlord's discussion of carpet damage, and the tenant's request for a return of her security deposit, an invoice from landlord AS' husband's construction company for carpet installation, in the amount of \$250.00, an invoice from landlord DF for painting in the amount of \$672.00, and receipts for carpet expenses.

In response, the tenant said that the landlord discussed expenses, but that she did not agree to any expenses.

### Analysis

In a claim for damage or loss under the Act or tenancy agreement, the claiming party, both parties in this case, has to prove, upon 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 all reasonable measures to mitigate their loss.

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

### *Tenant's 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 claiming against 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 tenancy ended on August 31, 2012, and the landlord acknowledged receiving the tenant's written forwarding address by September 26, 2012.

I accept that this method of communication was the method of communication between the parties, as demonstrated by the landlord'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 tenant's forwarding address through the September 24, 2012 email to the landlord, with the landlord's acknowledgment, sufficiently served, pursuant to section 71 of the Act.

As the last day of the tenancy was August 31, 2012, and I have found that the landlord had received the tenant's written forwarding address by September 26, 2012, the landlord had 15 days from September 26, 2012, the last day of the tenancy, to file an application for dispute resolution claiming against the security deposit or return the tenant's security deposit. As the landlord failed to file their application until January 22, 2013, did not have the tenant's written consent to retain any portion of her security deposit, and did not return the tenant's security deposit, I find the tenant has established a monetary claim of double recovery of her security deposit of \$500.00.

Due to her successful application, I also award the tenant recovery of her filing fee of \$50.

*Landlord's application-*

Under sections 24 and 35 of the Act, when a landlord fails to conduct a move-in condition inspection and move-out condition inspection and properly complete a condition inspection report, the landlord's claim against the security deposit for damage to the property is extinguished. Because the landlords in this case did not prepare and complete condition inspection reports, they lost their right to claim the security deposit for damage to the property.

Additionally, I also find the landlords submitted insufficient evidence that the tenant left the rental unit in a state which required repairing or remediation.

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 failed to meet their obligation under of the Act of completing the inspections and therefore there is no independent record of the condition of the rental unit at the start or at the end of the tenancy.

I do not find the receipts provided by the landlords to be persuasive or convincing.

I therefore dismiss the landlords' application, without leave to reapply.

As I have dismissed the landlord's application, I therefore dismiss their request for recovery of the filing fee.

### Conclusion

The tenant has established a monetary claim of \$1050.00, comprised of her security deposit of \$500.00, doubled, and for recovery of the filing fee of \$50.00.

I therefore grant the tenant a final, legally binding monetary order in the amount of \$1050.00, which I have enclosed with the tenant's Decision.

Should the landlords fail to pay the tenant 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.

The landlords' application is dismissed.

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 31, 2013

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Residential Tenancy Branch

