



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes: OPR, MNR, MNDC, MNSD, FF

### Introduction

This hearing was scheduled in response to the landlord's application for an order of possession / a monetary order as compensation for unpaid rent / compensation for damage or loss under the Act, Regulation or tenancy agreement / retention of the security deposit / and recovery of the filing fee. The landlord participated in the hearing and gave affirmed testimony. The tenants did not appear.

The landlord's application for dispute resolution was received by the Residential Tenancy Branch (the "Branch") on January 10, 2013. When the tenants vacated the unit on January 15, 2013, the landlord had still not received the notice of hearing documents from the Branch. As the tenants failed to provide a forwarding address, the landlord was unable to serve the tenants with the "notice of a dispute resolution hearing" documents (2) at such time as the landlord received them from the Branch.

As the tenants have vacated the unit, the landlord withdrew her application for an order of possession.

### Issue(s) to be Decided

Whether the landlord is entitled to any of the above under the Act, Regulation or tenancy agreement.

### Background and Evidence

Pursuant to a written tenancy agreement, the fixed term of tenancy was from September 1, 2012 to August 31, 2013. Monthly rent of \$1,200.00 was due and payable in advance on the first day of each month, and a security deposit of \$600.00 was collected. A move-in condition inspection report was completed with the participation of both parties.

Arising from rent which remained unpaid when due on January 1, 2013, the landlord issued a 10 day notice to end tenancy for unpaid rent dated January 2, 2013. The notice was served by way of posting on the tenants' door on that same date. A copy of

the notice was submitted in evidence. Subsequently, the tenants made no further payment toward rent and they vacated the unit on January 15, 2013. The landlord found a unit in need of considerable cleaning and repairs. A move-out condition inspection report was completed with the participation of both parties. By way of signatures on the move-out condition inspection report, the tenants consented to the landlord's retention of the full security deposit.

The landlord testified that cleaning and repairs are nearing completion and that advertising and screening for new renters will be undertaken by a property professional.

### Analysis

The full text of the Act, Regulation, Residential Tenancy Policy Guidelines, Fact Sheets, forms and more can be accessed via the website: [www.rto.gov.bc.ca](http://www.rto.gov.bc.ca)

In regard to service of documents, section 88 of the Act speaks to **How to give or serve documents generally**, while section 89 of the Act addresses **Special rules for certain documents**. As the landlord was unable to serve the tenants with the "notice of a dispute resolution hearing" document, the tenants did not attend the hearing. Accordingly, the landlord's application for a monetary order as compensation for unpaid rent / and compensation for damage or loss under the Act, Regulation or tenancy agreement are hereby dismissed with leave to reapply.

However, based on the landlord's affirmed testimony and on the documentary evidence which includes move-in and move-out condition inspection reports signed by both parties, I find that the landlord has established entitlement to retention of the tenants' full security deposit of \$600.00. In this regard, section 38 of the Act addresses **Return of security deposit and pet damage deposit**, and provides in part as follows:

38(4) A landlord may retain an amount from a security deposit or a pet damage deposit if,

(a) at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant, ....

As earlier noted, by way of signatures on the move-out condition inspection report, the tenants consented to the landlord's retention of the full \$600.00 security deposit.

As the application for an order of possession was withdrawn, as certain other aspects of the application are dismissed with leave to reapply, and as the tenants provided the

landlord with written consent to retain their security deposit, the landlord's application to recover the filing fee is hereby dismissed.

Conclusion

The application for an order of possession is withdrawn.

The landlord is ordered to retain the tenants' full security deposit of \$600.00.

Certain other aspects of the application are dismissed with leave to reapply.

The application to recover the filing fee is hereby 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*.

Dated: February 07, 2013

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Residential Tenancy Branch

