



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNSD FF

### Introduction

This hearing dealt with an Application for Dispute Resolution filed on November 16, 2012, by the Landlord to obtain a Monetary Order to keep the Tenants' security deposit and to recover the cost of the filing fee for this application.

The Tenants appeared at the teleconference hearing; however, no one appeared on behalf of the Landlord despite this hearing being scheduled to hear the matters pertaining to the Landlord's application.

### Issue(s) to be Decided

1. Should this application be dismissed with or without leave to reapply?
2. Should the Tenants be issued a Monetary Order for the return of their deposit?

### Background and Evidence

There was no evidence submitted in support of the Landlord's claim as no one attended the teleconference hearing on behalf of the Landlord.

The Tenants provided affirmed testimony and stated that they entered into a written fixed term tenancy agreement that began on August 1, 2012 and was set to expire on April 30, 2013. Rent was payable on the first of each month in the amount of \$800.00. The security deposit of \$437.50 was paid to the Landlord in June 2012 for a previous tenancy at a different location owned by the Landlord on Aleza Cres. Their deposit was transferred to this tenancy when they moved in August 2012. No condition inspection report forms were completed at move in or at move out and they were not provided a copy of their tenancy agreements.

The Tenants vacated the property October 31, 2012, after finding new tenants that were approved by the Landlord. The Landlord entered into a new tenancy agreement with

the replacement tenants. The Tenants provided the Landlord with their forwarding address on November 7, 2012. The Landlord has not returned any portion of their deposit.

### Analysis

Section 61 of the *Residential Tenancy Act* states that upon accepting an application for dispute resolution, the director must set the matter down for a hearing and that the Director must determine if the hearing is to be oral or in writing. In this case, the hearing was scheduled for an oral teleconference hearing.

In the absence of the applicant Landlord, the telephone line remained open while the phone system was monitored for ten minutes and no one on behalf of the applicant Landlord called into the hearing during this time.

Rule 10.1 of the Rules of Procedure provides as follows:

**10.1 Commencement of the hearing** The hearing must commence at the scheduled time unless otherwise decided by the arbitrator. The arbitrator may conduct the hearing in the absence of a party and may make a decision or dismiss the application, with or without leave to re-apply.

Accordingly, in the absence of any evidence or submissions from the applicant I order the application dismissed without liberty to reapply.

When a landlord fails to properly complete a condition inspection report, the landlord's claim against the security deposit for damage to the property is extinguished, as stipulated in sections 24 and 36 of the Act (these sections have been included at the end of this decision).

Because the Landlord in this case did complete move-in or move-out condition inspection reports, he lost his right to claim the security deposit for damage to the property and was required to return it to the Tenants within 15 days of the tenancy ending, November 15, 2012. The Landlord has not returned the deposit.

*Residential Tenancy Policy Guideline #17* stipulates that if a 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, then the Arbitrator will order the return of double the security deposit and issue the tenant a monetary order. Accordingly, I have awarded the

Tenants return of double their security deposit plus interest in the amount of **\$875.00** (2 x \$437.50 + \$0.00 interest)

Conclusion

I HEREBY DISMISS the landlord's application for a Monetary Order, without leave to reapply.

The Tenants have been issued a Monetary Order in the amount of **\$875.00**. This Order is legally binding and must be served upon the Landlord. In the event the Landlord does not comply with this Order it may be filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

This decision is legally binding and 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 22, 2013

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Residential Tenancy Branch

**Consequences for tenant and landlord if report requirements not met**

- 24** (1) The right of a tenant to the return of a security deposit or a pet damage deposit, or both, is extinguished if
- (a) the landlord has complied with section 23 (3) [*2 opportunities for inspection*], and
  - (b) the tenant has not participated on either occasion.
- (2) The right of a landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord
- (a) does not comply with section 23 (3) [*2 opportunities for inspection*],
  - (b) having complied with section 23 (3), does not participate on either occasion, or
  - (c) does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.

**Consequences for tenant and landlord if report requirements not met**

- 36** (1) The right of a tenant to the return of a security deposit or a pet damage deposit, or both, is extinguished if
- (a) the landlord complied with section 35 (2) [*2 opportunities for inspection*], and
  - (b) the tenant has not participated on either occasion.
- (2) Unless the tenant has abandoned the rental unit, the right of the landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord
- (a) does not comply with section 35 (2) [*2 opportunities for inspection*],
  - (b) having complied with section 35 (2), does not participate on either occasion, or
  - (c) having made an inspection with the tenant, does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations

