



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDC MNSD FF

### Preliminary Issues

During the course of this proceeding the parties mutually agreed to allow the Tenants to amend their application for dispute resolution to include a request for the return of double their security deposit. Accordingly, I amended the application, pursuant to section 64 (3)(c) of the *Act*.

### Introduction

This hearing dealt with an Application for Dispute Resolution filed on January 16, 2013, by the Tenants to obtain a Monetary Order for: money owed or compensation for damage or loss under the Act, regulation or tenancy agreement; for the return of double their security deposit; and to recover the cost of the filing fee from the Landlord for this application.

The parties appeared at the teleconference hearing and gave affirmed testimony. Each party acknowledged receipt of evidence submitted by the other. The Tenants received one copy of the Landlords' evidence on March 27, 2013. The Tenants placed their evidence in the Landlord's mailbox on April 4, 2013. Upon review of the volumes of evidence, the methods and dates of service, I find each party was sufficiently served with the other's evidence and each submission was considered in my decision, pursuant to section 11 of the *Residential Tenancy Branch Rules of Procedure*.

At the outset of the hearing I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each party was provided an opportunity to ask questions about the process however each declined and acknowledged that they understood how the conference would proceed.

During the hearing each party was given the opportunity to provide their evidence orally, respond to each other's testimony, and to provide closing remarks. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

### Issue(s) to be Decided

Should the Tenants be granted a Monetary Order?

### Background and Evidence

The Landlords submitted 172 pages of documentary evidence which included, among other things, copies of: a spreadsheet listing repairs from May 14, 2012 to January 21, 2013; numerous receipts for repairs; volumes of text messages between the Landlords and Tenants; photos of the rental unit; e-mails between the parties; a notice of rent increase dated October 25, 2012; two 10 day Notices issued in September and October 2012; a cheque dated February 28, 2013 refunding balance of security deposit; a 1 Month Notice issued January 15, 2013; the tenancy agreement and addendum; and the move out condition inspection report form.

The Tenants submitted 57 photos plus 35 pages of documentary evidence which included, among other things, copies of: 57 photos of the rental unit; e-mails between the parties; text messages between the parties; an e-mail from the Tenant's brother on March 18, 2013; and the move out condition inspection report form.

The following facts were not in dispute and were confirmed by each party during this proceeding:

- The parties entered into a fixed term tenancy that began on April 1, 2012 and was set to end 12 months later for the monthly rent of \$1,600.00 due on the fifteenth of each month;
- The Tenants were allowed to occupy the rental unit as of March 15, 2012
- No move in condition inspection report form was completed as the Tenants moved in as soon as the previous tenants moved out. The Landlord returned May 16, 2012 and did several hours of cleaning of the rental unit.
- On approximately March 16, 2012 the Tenants paid \$800.00 as the security deposit;

- Rent was paid late and two subsequent 10 Day Notices were issued on September 25, 2012 and October 24, 2012;
- On October 25, 2012 a notice of rent increase was served to the Tenants advising rent would be increasing to \$1,660.00 per month effective March 15, 2013;
- January 15, 2013 at 6:58 p.m. the Tenants e-mailed the Landlords advising they were ending their tenancy effective February 15, 2013;
- January 16, 2013 at 5:30 a.m. a 1 Month Notice to end tenancy was placed in the Tenants' mailbox at the rental unit. The Tenants received the Notice on January 17, 2013;
- January 16, 2013 the Tenants filed an application for dispute resolution;
- February 16, 2013 the Tenants vacated the unit and on February 16, 2013, at 2:00 p.m. the parties completed the move out condition inspection and completed the condition inspection form agreeing to "\$100 - \$200 + receipts will be provided for replacement doors" to be deducted from the security deposit.
- On February 28, 2013, the Landlords mailed the Tenants a cheque for \$457.20 of the security deposit with receipts; withholding \$342.80 from the \$800.00 deposit.

The Tenants testified that they are seeking \$5,000.00 in compensation because they feel the house was not worth \$1,600.00 a month rent. They believe they should be reimbursed rent of \$5,000.00 because the Landlords did not repair things in a timely manner. They stated that it is their opinion that repairs should be completed within one week of being reported and emergency repairs should be completed the same day they are reported.

The Landlords testified that they submitted volumes of evidence because they were not completely sure of what the Tenants were claiming because there was no monetary order worksheet provided. They noted that the application indicates that repairs were not properly completed. The Landlords pointed to the spreadsheet they provided in evidence which outlines the date they were notified of required repairs, the issue, the action taken, completion date, invoice numbers, and amounts paid, which they argued proves the repairs were attended to in a timely manner. They also noted that they provided supporting evidence for each repair item listed on the spreadsheet as well as documentation for numerous issues that occurred with this tenancy.

Upon review of the move out inspection report and disbursement of the security deposit the Tenants requested that they be reimbursed double the amount owed. They argued

that the Landlords deducted money which they had not agreed too on the move out report. Both parties agreed to discuss the security deposit and amend the application.

The Landlords confirmed they deducted \$142.80 above the \$200.00 agreed to on the move out inspection report form and argued that because they wrote "receipts will be provided for replacement doors" that it covered them for the additional deduction. They argued there were additional expenses such as hinges, door handles, and painting the new doors as well as repairing the holes left in the walls.

The Tenants stated that he deducted money for drywall repairs for holes that were in the wall when they moved in. They argued that they had a verbal agreement that the Landlord would not charge them for drywall repairs because his buddy would do the work for free. They noted that the Landlord did not provide receipts for door hinges or handles yet he is seeking money for them.

The parties were given the opportunity to settle the matters pertaining to the security deposit; however, the parties were not able to reach an agreement. Each party was canvassed and given the opportunity to provide additional information. No one had anything further to add that had not already been included in their oral testimony or their written submission.

### Analysis

A party who makes an application for monetary compensation against another party has the burden to prove their claim. Awards for compensation are provided for in sections 7 and 67 of the *Residential Tenancy Act*. Accordingly an applicant must prove the following when seeking such awards:

1. The other party violated the Act, regulation, or tenancy agreement;
2. The violation caused the applicant to incur damage(s) and/or loss(es) as a result of the violation;
3. The value of the loss; and
4. The party making the application did whatever was reasonable to minimize the damage or loss.

I have carefully considered the foregoing, the volumes of documentary evidence, and on a balance of probabilities I find as follows:

Section 32 of the *Act* requires a landlord to maintain residential property in a state of decoration and repair that complies with the health, safety and housing standards

required by law, and having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

The evidence indicates that the tenancy relationship became acrimonious shortly after the Tenants were served notice of a rent increase. In a text message sent January 2, 2013 at 6:25 p.m. by the Landlord(s) they agree to allow the Tenants to end the tenancy prior to the end of the fixed term lease.

I accept the Landlords' evidence and testimony that they took reasonable steps to ensure repairs at the Tenants' request were attended to in a timely manner. The Landlord's supporting evidence clearly supports when requests were received and when repairs were completed as listed on their spreadsheet.

Notwithstanding the Tenants' argument that based on their opinion repairs were not completed in a timely manner, I find the Tenants provided insufficient evidence to meet the burden of proof to support their claim for \$5,000.00 compensation. I make this finding in part because there is no evidence to prove the Landlords breached the Act. Furthermore, there is no evidence to support the Tenants attempted to mitigate their alleged loss as they did not seek assistance to resolve their issues through dispute resolution prior to ending their tenancy. Rather, they waited until the day after they served the Landlord with their notice to end tenancy and then made application for monetary compensation. Accordingly, I dismiss the Tenant's claim for \$5,000.00, without leave to reapply.

The evidence supports the tenancy ended February 16, 2013 and the Landlords were provided the Tenants' forwarding address on February 16, 2013. The Landlords withheld \$342.80 from the security deposit returning \$457.20 on February 28, 2013. No move in condition inspection report form was completed and the Tenants argued they authorized the Landlord to keep up to \$200.00 from the deposit to replace doors.

Upon review of the move out condition inspection report form I find the Tenant's authorized the Landlords to withhold up to \$200.00 to replace the damaged doors and the Landlords were required to provide the Tenants with copies of the receipts to purchase the replacement doors. Therefore, the Landlords only had permission to keep up to \$200.00 and the amount of security deposit held in trust as of February 16, 2013, was reduced to \$600.00.

Section 38(1) of the *Act* stipulates that if within 15 days after the later of: 1) the date the tenancy ends, and 2) the date the landlord receives the tenant's forwarding address in

writing, the landlord must repay the security deposit, to the tenant with interest or make application for dispute resolution claiming against the security deposit.

In this case the Landlords were required to return the Tenant's security deposit of \$600.00 or file for dispute resolution no later than March 3, 2013. They returned \$457.20 on February 28, 2013 and I find they kept the remaining \$142.80, in breach of the Act.

Based on the above, I find that the Landlords have failed to comply with Section 38(1) of the *Act* and that the Landlords are now subject to Section 38(6) of the *Act* which states that if a landlord fails to comply with section 38(1) the landlord may not make a claim against the security deposit and the landlord must pay the tenant double the security deposit.

Based on the aforementioned I find the Tenants have met the burden of proof to establish their claim and I award them double their security deposit as follows:

Double security deposit (2 x \$600.00)	\$1,200.00
LESS: Amount reimbursed Feb 28/13	<u>- 457.20</u>
<b>Total amount due to the Tenant's</b>	<b><u>\$ 742.80</u></b>

The Tenants were not successful with their original claim; therefore I decline to award recovery of their filing fee.

### Conclusion

The Tenants have been awarded a Monetary Order in the amount of **\$742.80**. This Order is legally binding and must be served upon the Landlords. In the event that the Landlords do 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 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: April 09, 2013

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Residential Tenancy Branch