



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

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

### Introduction

This hearing was scheduled in response to an application by the tenants for a monetary order as compensation for the cost of emergency repairs / compensation for damage or loss under the Act, Regulation or tenancy agreement / return of the security deposit and pet damage deposit / permission to reduce rent for repairs, services or facilities agreed upon but not provided / and recovery of the filing fee. Both parties attended and gave affirmed testimony.

### Issue(s) to be Decided

Whether the tenants are 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 is from October 1, 2011 to April 1, 2012. Monthly rent of \$1,500.00 is due and payable in advance on the first day of each month. A security deposit of \$750.00 and a pet damage deposit of \$750.00 were both collected on September 11, 2011. Pursuant to the tenancy agreement, rent does not include utilities. A move-in condition inspection report was not completed.

By letter dated January 4, 2012, the tenants gave notice to end the tenancy. Rent was paid to the end of January 2012, and during the hearing the parties agreed that the tenants had vacated the unit by the end of that month. A move-out condition inspection report was not completed.

The landlord testified that she became aware of the tenants' forwarding address when she received their application for dispute resolution and the notice of hearing (the

“hearing package”). There is otherwise no documentary evidence of the tenants’ having provided the landlord with their forwarding address.

The landlord testified that she did not rent the unit again and did not advertise for new renters after the tenants vacated the unit. Rather, the landlord testified that the unit was readied for sale and that it ultimately sold.

The tenant testified that there were numerous problems and deficiencies at the unit, all of which led to the tenants’ decision to end the tenancy prior to the end of the fixed term. In addition to undertaking other miscellaneous tasks, the tenants have listed various “plumbing repairs” and electrical work they claim to have completed during the tenancy. Further, the tenants claim in their application as follows:

access to shop and 70% of property was removed (beginning of November)

primary heat source was removed (beginning of November)

persistent water problems were not resolved

repair of plumbing, electrical and venting (October 1 thru January 21)

The tenants have assigned a cost to each of the above items, and the total amount of compensation sought in the tenants’ application includes these costs.

While the parties had some limited discussion around settling their dispute during the hearing, a resolution was not achieved.

### 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)

Section 32 of the Act speaks to **Landlord and tenant obligations to repair and maintain**:

32(1) A landlord must provide and maintain residential property in a state of decoration and repair that

(a) complies with the health, safety and housing standards required by law, and

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

(2) A tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access.

(3) A tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.

(4) A tenant is not required to make repairs for reasonable wear and tear.

(5) A landlord's obligations under subsection (1)(a) apply whether or not a tenant knew of a breach by the landlord of that subsection at the time of entering into the tenancy agreement.

Further to the above, the attention of the parties is drawn to the following particular sections of the Act:

Section 23: **Condition inspection: start of tenancy or new pet**

Section 24: **Consequences for tenant and landlord if report requirements not met**

Section 33: **Emergency repairs**

Section 35: **Condition inspection: end of tenancy**

Section 36: **Consequences for tenant and landlord if report requirements not met**

Documentary evidence submitted by the tenants does not include any receipts whatsoever in support of the costs claimed. Additionally, there is no documentary evidence of communication between the parties during the tenancy in relation to any problems or deficiencies at the unit. Further, as previously noted, neither a move-in, nor a move-out condition inspection report was completed. In the result, I find there is insufficient evidence to support the tenants' application for costs arising from problems and deficiencies they claim to have encountered at the unit. Accordingly, that aspect of the application is hereby dismissed.

Section 38 of the Act addresses **Return of security deposit and pet damage deposit**. In part, this section provides that within 15 days of the later of the date the tenancy

ends, and the date the landlord receives the tenant's forwarding address in writing, the landlord must either repay the security / pet damage deposit, or file an application for dispute resolution. If the landlord does neither, section 38(6) of the Act provides that the landlord may not make a claim against the security / pet damage deposit and must pay the tenant double the amount of the security / pet damage deposit.

The tenants' application for dispute resolution was filed on January 24, 2013. In response to the landlord's receipt of the tenants' hearing package, the landlord made a documentary submission to the Residential Tenancy Branch for the purposes of the hearing. Based on the documentary evidence and testimony, I find that the landlord was informed in writing of the tenants' forwarding address at such time as she received the tenants' hearing package.

Further, I find that the landlord neither repaid the security / pet damage deposit, nor filed an application for dispute resolution, within 15 days of being informed by the tenants of their forwarding address by way of service of the hearing package. Accordingly, I find that the tenants have established entitlement to compensation reflecting the double return of the security / pet damage deposit in the total amount of **\$3,000.00** [(2 x \$750.00) + (2 x \$750.00)].

As the tenants have achieved some success with their application, I find that they have also established entitlement to recovery of the **\$50.00** filing fee.

### Conclusion

Pursuant to section 67 of the Act, I hereby issue a **monetary order** in favour of the tenants in the amount of **\$3,050.00**. Should it be necessary, this order may be served on the landlord, filed in the 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 18, 2013

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Residential Tenancy Branch