



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Dispute Codes:**

MNDC; MNSD; FF; O

### **Introduction**

This is the Tenant's application for compensation for damage or loss under the Act, regulation or tenancy agreement; for compensation pursuant to the provisions of Section 38(6) of the Act; to recover the cost of the filing fee from the Landlord; and for "other" relief.

The Tenants gave affirmed testimony at the Hearing.

The Tenants testified that they mailed the Notice of Hearing documents and copies of their documentary evidence to the Landlord, by registered mail on January 30, 2013, to the Landlord's overseas address for service and to the rental property. The Tenants provided copies of the registered mail receipts and tracking numbers for both of the packages. The Tenants stated that they also e-mailed the documents to the Landlord as a courtesy. The Tenants provided a copy of a search of the Canada Post tracking system which indicates that the Landlord signed for the registered documents on March 13, 2013.

Based on the Tenant's documentary evidence, I am satisfied that the Landlord was duly served pursuant to the provisions of Section 89(1)(c) of the Act. Despite being served with the Notice of Hearing documents, the Landlord did not sign into the teleconference and the Hearing continued in his absence.

### **Preliminary Matter**

The Tenants' Application for Dispute Resolution indicates that they are seeking "other" relief; however, the Tenants did not provide sufficient details in their Application with respect to what other relief they were seeking. When a party seeks "other" relief, the Application for Dispute Resolution requires the Applicant to provide details in the "Details of Dispute Resolution" section. No details were provided. Therefore this portion of the Tenants' application is dismissed.

### **Issues to be Decided**

- Was there an agreement between the parties that the Landlord would refund the Tenants the cost of the cable bills? Are the Tenants entitled to compensation in the amount of \$644.63 for the cable costs?
- Did the Landlord return the security deposit within 15 days of receipt of the Tenants' forwarding address?

### **Background and Evidence**

A copy of the tenancy agreement was provided in evidence. This tenancy began on June 15, 2011 and ended on October 1, 2012. Monthly rent was \$1,220.00, due on the first day of each month. The Tenants paid a security deposit in the amount of \$1,200.00 at the beginning of the tenancy. There was no Condition Inspection Report completed that complies with the requirements of Section 20 of the regulations, at the beginning of the end of the tenancy.

The Tenants testified that the Landlord lives overseas and that they were in the practice of communicating with him via e-mails. Copies of numerous e-mails between the parties were provided in evidence. The Tenants paid rent by direct transfer into the Landlord's Canadian bank account.

The Tenants stated that rent included cablevision. They testified that they had an agreement with the Landlord that the Tenants would pay the cable bills and the Landlord would reimburse them for the basic cable charges; however, the Landlord has refused to repay their basic cable charges. The Tenants provided copies of cable bills in evidence. The Tenants seek a monetary award for \$644.62 for cable, calculated as follows:

July – December, 2011, basic cable (promotion)	
\$33.00 per month x 6 months	\$198.00
January, 2011 – September, 2012, basic cable	
\$41.95 per month x 9 months	\$377.55
Plus HST @ 12%	<u>\$69.07</u>
TOTAL	<b>\$644.62</b>

The Tenants testified that they provided their forwarding address to the Landlord before they moved out of the rental unit, on September 17, 2012. They stated that they e-mailed the Landlord several times after they moved out of the rental unit, enquiring about their security deposit. The Tenants stated that they finally received the full

security deposit refund on November 19, 2012. The Tenants testified that the Landlord did not mail the cheque until November 14, 2012. The Tenants provided a copy of the refund cheque and a copy of the envelope in which it was contained.

The Tenants seek compensation in the amount of **\$1,200.00** for late return of their security deposit refund.

### **Analysis**

I accept the Tenant's undisputed testimony and evidence in its entirety. The Landlord lives in another country and did not have an agent acting for him during the tenancy. I find that the parties regularly communicated by e-mails with respect to tenancy issues, as indicated in the copies of e-mails provided in evidence. Some of these issues included:

- communications regarding how rent would be paid;
- provisions for repaying the Tenants for the cost of basic cable;
- arranging for provision of a parking space for the Tenants;
- arrangements for the Tenants to hire an electrician on the Landlord's behalf for repairs at the rental unit;
- the Tenants' notice to end the tenancy, given on July 11, 2013 for October 1, 2012;
- arrangements for the Tenants to act as the Landlord's agents in seeking new tenants for the rental unit;
- repeated requests for refund of basic cable costs and return of the security deposit.

Page two of the tenancy agreement clearly indicates that cablevision is included in the rent. In an e-mail dated June 17, 2011, the Landlord writes, in part "... when you get the price sorted for basic cable, I will send you a cheque to cover the year, just to keep the contract accurate for the tenancy. I will do that as soon as you confirm the basic cable price per month." The Tenants sent e-mails confirming the basic cable price and on October 30, 2012, they provided the Landlord with their calculation of the total paid for basic cable over the term of the tenancy.

Therefore, I find that the parties had an agreement that rent included basic cablevision; that the Tenants would pay the cable bill; and that the Landlord would refund the Tenants for the cost of basic cable. Based on the Tenants' undisputed testimony and the documentary evidence provided, I find that the Landlord did not refund any of the basic cable cost.

Copies of the cable bills were provided, which confirm the cost of basic cable. This portion of the Tenants' application is granted as claimed in the amount of **\$644.62**.

A security deposit is held in a form of trust for the Tenants and must be applied in accordance with the provisions of the Act.

Section 38(1) of the Act provides that (unless a landlord has the tenant's consent to retain a portion of the security deposit) at the end of the tenancy and after receipt of a tenant's forwarding address in writing, a landlord has 15 days to either:

1. repay the security deposit in full, together with any accrued interest; or
2. make an application for dispute resolution claiming against the security deposit.

I find that the Landlord received the Tenant's forwarding address on September 17, 2012, by e-mail. The evidence shows that the Landlord responded to the Tenants' e-mail on the same day, September 17, 2012. Further to the provisions of Section 71(2)(b) of the Act, I find that the Landlord was sufficiently served with the Tenants' forwarding address on September 17, 2012. I accept the Tenants' undisputed testimony that the tenancy ended on October 1, 2012.

The security deposit refund cheque is dated October 15, 2012; however, the envelope in which it was contained is postmarked November 14, 2012. Therefore, I find that the Landlord did not return the security deposit within 15 days of the end of the tenancy. The Landlord has not filed for dispute resolution against the security deposit.

Section 38(6) of the Act provides that if a landlord does not comply with Section 38(1) of the Act, the landlord **must** pay the tenant double the amount of the security deposit. Therefore, I find that the Tenants are entitled to compensation in the equivalent of double the security deposit, in the amount of **\$1,200.00**.

The Tenants have been successful in their application and I find that they entitled to recover the cost of the **\$50.00** filing fee from the Landlord.

### **Conclusion**

I hereby provide the Tenants with a Monetary Order in the amount of **\$1,894.62** for service upon the Landlord. This Order may be filed in the Provincial Court of British Columbia (Small Claims) 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 30, 2013

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Residential Tenancy Branch

