



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Concert Realty Services Ltd.  
and [tenant name suppressed to protect privacy]

## **DECISION**

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

### Introduction

This hearing concerns 2 applications: i) by the landlord for a monetary order as compensation for unpaid rent / compensation for damage to the unit, site or property / compensation for damage or loss under the Act, Regulation or tenancy agreement / retention of the security deposit / and recovery of the filing fee; and ii) by the tenants for a monetary order as compensation reflecting the double return of the security deposit / and recovery of the filing fee.

Both parties attended and / or were represented and gave affirmed testimony.

### Issue(s) to be Decided

Whether either party 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 November 1, 2010 to October 31, 2011. The agreement provides that after the end of the fixed term, tenancy would continue on a month-to-month basis. Monthly rent of \$1,010.00 was due and payable in advance on the first day of each month, and a security deposit of \$505.00 was collected on October 21, 2010. A move-in condition inspection report was completed with the participation of both parties on October 23, 2010.

In response to the landlord's application, a Direct Request Proceeding took place on October 31, 2011. Such an *ex parte* proceeding does not require the attendance of either party. In the decision issued by the same date, the Dispute Resolution Officer granted an order of possession in favour of the landlord, to be effective two (2) days after service on the tenants. The landlord's application for a monetary order as

compensation for unpaid rent was dismissed with leave to reapply. Additional realted findings were set out in the decision as follows:

- that rent for October 2011 was not paid when due on October 1, 2011;
- that the landlord had issued a 10 day notice to end tenancy for unpaid rent dated October 8, 2011;
- that the 10 day notice was posted to the unit door on October 8, 2011;
- that the tenants were deemed to have received the notice on October 11;
- that the effective date of the notice was October 21, 2011;
- that the tenants did not pay the rent in full or apply to dispute the notice within 5 days after it was received;
- that the tenants were conclusively presumed under section 46(5) of the Act to have accepted that tenancy ended on the effective date of the notice.

The landlord's agent testified that a time was proposed to the tenants for completion of a move-out condition inspection, however, the unit was found to be vacant on October 31, 2011, and no forwarding address was provided by the tenants. The landlord testified that no keys were returned by the tenants, although the tenants dispute this. A move-out condition inspection report was completed by the landlord without the participation of the tenants on October 31, 2011.

Following the passage of time, by letter dated May 1, 2013, legal counsel acting on behalf of tenant "RT" contacted the landlord. In addition to setting out the details of the tenant's grievance against the landlord, the letter from legal counsel provided the landlord with the tenant's forwarding address. Subsequently, the landlord filed an application for dispute resolution on May 8, 2013.

### 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)

Based on the testimony of the parties and documentary evidence which includes, but is not limited to, the comparative results of move-in and move-out condition inspection

reports and photographs taken in the unit, the various aspects of the respective applications and my findings around each are set out below.

## TENANTS

\$1,010.00 (2 x \$505.00): *double the return of the original security deposit.*

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 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 deposit and must pay the tenant double the amount of the security deposit.

In the circumstances of this dispute, while the landlord succeeded in obtaining an order of possession by way of decision dated October 31, 2013, the landlord's application for a monetary order was dismissed with leave to reapply. In this regard, the decision documents, in part as follows:

Section 89(2) of the *Act* allows a landlord, when applying for an order of possession to serve the notice by attaching a copy to a door or other conspicuous place, however Section 89(1) does not allow this method of service for a monetary order. As such, I dismiss the landlord's Application for a monetary order, with leave to reapply, as it was not served in accordance with the *Act*.

In view of the finding that the tenants failed to pay rent for October 2011, I find it unlikely that the landlord would not have filed another application seeking compensation in a timely fashion. While the tenants claim to have provided the landlord with a forwarding address in October 2011, I find on a balance of probabilities that they did not, otherwise, as previously stated, I find it likely that the landlord would have proceeded to file another application in a timely fashion.

After the tenant's forwarding address was provided in the letter to the landlord from tenant's legal counsel by date of May 1, 2013, within 15 days after that on May 8, 2013 the landlord filed an application to retain the security deposit and to seek additional compensation.

Further, section 39 of the Act speaks to how the **Landlord may retain deposits if forwarding address not provided**:

39 Despite any other provision of this Act, if a tenant does not give a landlord a forwarding address in writing within one year after the end of the tenancy,

(a) the landlord may keep the security deposit or the pet damage deposit, or both, and

(b) the right of the tenant to the return of the security deposit or pet damage deposit is extinguished.

Following from all the above, the tenants' application for the double return of the security deposit is hereby dismissed.

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**\$50.00:** *filing fee.*

As the tenants have not succeeded with the principal aspect of their application, the application to recover the filing fee is also hereby dismissed.

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## **LANDLORD**

**\$1,055.00:** *unpaid rent (\$1,010.00) and unpaid parking (\$45.00) for October 2011.*

In particular consideration of the decision issued by date of October 31, 2011, and the landlord's letter to the tenant dated October 6, 2011, in which the landlord informs the tenant that his cheque made payable to the landlord in the amount of \$1,055.00 was returned by reason of "Insufficient Funds," I find that the landlord has established entitlement to the full amount claimed.

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**\$25.00:** *administration fee assessed for tenant's NSF cheque.*

Following from the reasons set out immediately above, I find that the landlord has established entitlement to the full amount claimed.

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**\$110.00:** *replacement of key devices.*

Section 37 of the Act speaks to **Leaving the rental unit at the end of a tenancy**, in part:

37(2) When a tenant vacates a rental unit, the tenant must

- (b) give the landlord all the keys or other means of access that are in the possession or control of the tenant and that allow access to and within the residential property.

I find on a balance of probabilities that the tenants failed to return all unit key(s), fob(s), laundry card(s) and remote(s) to the landlord at the end of tenancy. Accordingly, I find that the landlord has established entitlement to the full amount claimed.

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**\$348.88:**

- \$70.00: *unit cleaning;*
- \$140.00: *repairs to wall damage;*
- \$78.40: *carpet cleaning,*
- \$60.48: *blinds cleaning.*

Section 37 of the Act addresses **Leaving the rental unit at the end of a tenancy**, and provides in part:

37(2) When a tenant vacates a rental unit, the tenant must

- (a) leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear, and...

Further, Residential Tenancy Policy Guideline # 1 speaks to “Landlord & Tenant – Responsibility for Residential Premises.”

Based principally on the comparative results of the move-in and move-out condition inspection reports, photos and receipts, I find that the landlord has established entitlement to the full amount claimed.

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**\$50.00:** *filing fee.*

As the landlord has mainly succeeded with this application, I find that the landlord has established entitlement to recovery of the filing fee.

Sub-total entitlement: **\$1,588.88**

I order that the landlord retain the security deposit of **\$505.00**, and I grant the landlord a **monetary order** under section 67 of the Act for the balance owed of **\$1083.88** (\$1,588.88 - \$505.00).

Conclusion

The tenants' application is hereby dismissed.

Pursuant to section 67 of the Act, I hereby issue a **monetary order** in favour of the landlord in the amount of **\$1,083.88**. This order may be served on the tenants, 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: August 06, 2013

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Residential Tenancy Branch

