



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNSD, MNR, FF

### Introduction

This hearing dealt with the landlords' application for dispute resolution under the Residential Tenancy Act (the "Act") seeking a monetary order for unpaid rent, for authority to retain the tenants' security deposit, and for recovery of the filing fee.

Landlord BG, the tenant and his agent appeared, the hearing process was explained and they were given an opportunity to ask questions about the hearing process.

The evidence was discussed and the tenant presented that they had filed documentary evidence; however this evidence was not before me, and the tenant said that he faxed the evidence the day prior to the hearing. I therefore have not considered the tenant's evidence as it was not properly submitted in advance of the hearing, as required by the Dispute Resolution Rules of Procedure (Rules) 4.1.

Thereafter the parties were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all oral and documentary evidence before me that met the requirements of the Dispute Resolution Rules of Procedure (Rules); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

### Issue(s) to be Decided

Are the landlords entitled to the sum claimed in their application?

### Background and Evidence

The undisputed testimony was that the tenancy began on July 15, 2012, ended on October 15, 2013, when the tenants vacated the rental unit, and monthly rent was \$1550.

The landlord contended and the tenancy agreement states that the tenants paid a security deposit of \$350, although the tenants were required to pay \$775. The tenant contended that they paid a security deposit of \$775.

In their application for dispute resolution, the landlord listed a request for monetary compensation of \$425, with an explanation that they, the landlords, received an order of possession for the rental unit effective for October 15, 2013. The landlord further submitted that they requested the amount of \$425 in the event the tenants failed to vacate the rental unit on October 15, 2013, for overholding in the rental unit.

All parties agreed that the tenants had moved out of the rental unit by October 15, 2013, and that the landlord has not returned to the tenants the amount of \$350.

The landlord then testified that, alternatively, she requested \$425, the balance of the security deposit the tenants were required to pay by the written tenancy agreement, for damage to the rental unit. The landlord testified that she misunderstood the way in which her application was to be marked and completed.

In response, the tenants submitted that they paid and had proof of a payment of \$775 for a security deposit, not \$350 as submitted by the landlord.

The landlord then countered that this issue, the amount of security deposit paid by the tenant, had previously been arbitrated and the tenants were found to have paid \$350.

### Analysis

Based on the relevant oral and written evidence, and on a balance of probabilities, I find as follows:

The landlords' application for dispute resolution clearly and solely asked for \$425 in the event the tenants failed to vacate the rental unit by October 15, 2013. As both parties agreed that the tenants had vacated the rental unit by that date, I find the landlord is not entitled to this potential loss of revenue sought for overholding in the rental unit by the tenants.

Although the landlord mentioned damage by the tenants, the landlord clearly did not seek compensation for damage to the rental unit and I have therefore not considered the same.

Due to the above, I dismiss the landlord's application, including their request for recovery of the filing fee.

As I have dismissed the landlord's application claiming against the tenants' security deposit, I have next considered the issue of the return of the tenants' security deposit.

Under Residential Tenancy Branch Policy Guideline #17, an Arbitrator will order the return of the security deposit or any balance remaining on the application of the landlord.

The parties disputed the amount paid, with the landlord saying that \$350 was paid and the tenants countering that \$775 was paid.

I note that the parties were in a dispute resolution hearing on October 1, 2013, on the tenants' application for dispute resolution, where another Arbitrator made a finding that the tenant submitted insufficient evidence to support their claim that \$775 was paid for the security deposit; as such I am not at liberty to change the results of an issue previously decided upon in dispute resolution due to the legal principal of *res judicata*, in this case, that the tenants' evidence does not support that they paid \$775.

The landlord confirmed that she is holding \$350 as a security deposit, and I therefore order that she return this amount to the tenants immediately.

Pursuant to section 67 of the Act, I award the tenants a monetary order in the amount of \$350, which I have enclosed with the tenants' Decision.

### Conclusion

The landlords' application is dismissed.

The tenants are granted a monetary order for the amount of \$350, which I have enclosed with the tenants' Decision.

Should the landlords fail to pay the tenants this amount without delay after being served the order, the monetary order may be filed in the Provincial Court of British Columbia

(Small Claims) for enforcement as an Order of that Court. The landlord is advised that costs of such enforcement are recoverable from the landlord.

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* and is being mailed to both the applicants and the respondents.

Dated: January 15, 2014

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Residential Tenancy Branch

