



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MND MNSD MNDC FF

### Introduction

This hearing dealt with an Application for Dispute Resolution filed on October 10, 2013, by the Landlords to obtain a Monetary Order for: damage to the unit, site or property, to keep the security deposit, for money owed or compensation for damage of loss under the Act, regulation or tenancy agreement, and to recover the cost of the filing fee from the Tenant for this application.

The respondent Tenant appeared at the scheduled teleconference hearing. However, no one appeared on behalf of the applicant Landlords.

### Issue(s) to be Decided

- 1) Should the Landlords' application for dispute resolution be dismissed with or without leave to reapply?
- 2) Should the Landlords be ordered to return the Tenant's security deposit?

### Background and Evidence

The Tenant provided affirmed testimony that she entered into a written fixed term tenancy agreement that began on May 1, 2013, and was set to expire on May 1, 2014. As per the copy of the tenancy agreement that she provided in her evidence, she was required to pay rent of \$1,500.00 on the first of each month. She provided evidence that she paid a security deposit of \$750.00 on April 18, 2013.

The Tenant confirmed that no condition inspection report form was completed at the onset of the tenancy and she was never served a notice with a date or time of when the move out inspection would take place. She stated that on September 1, 2013, after she paid her rent, she was personally served a 1 Month Notice to end her tenancy. She

vacated the property prior to the end of September 2013, in accordance with the 1 Month Notice.

The Tenant pointed to her evidence which included a letter dated September 25, 2013, with her forwarding address, which she stated she sent to the Landlord via registered mail, along with the keys to the rental unit. She confirmed she was served with the Landlord's application for dispute resolution at that forwarding address.

There was no additional evidence or testimony provided in support of the Landlords' application as no one attended the scheduled teleconference hearing on behalf of the Landlords.

### Analysis

Section 61 of the *Residential Tenancy Act* states that upon accepting an application for dispute resolution, the director must set the matter down for a hearing and that the Director must determine if the hearing is to be oral or in writing. In this case, the hearing was scheduled for an oral teleconference hearing.

In the absence of the applicant Landlords, the telephone line remained open while the phone system was monitored for eleven minutes and no one on behalf of the Landlords called into the hearing during this time.

Rule 10.1 of the Rules of Procedure provides as follows:

10.1 Commencement of the hearing The hearing must commence at the scheduled time unless otherwise decided by the arbitrator. The arbitrator may conduct the hearing in the absence of a party and may make a decision or dismiss the application, with or without leave to re-apply.

Accordingly, in the absence of any oral submissions from the applicant Landlords, I order their application dismissed without liberty to reapply.

The *Residential Tenancy Policy Guideline # 17*, the arbitrator will order the return of a security deposit, or any balance remaining on the deposit, less any deductions permitted under the Act, on:

- a landlord's application to retain all or part of the security deposit, or
- a tenant's application for the return of the deposit unless the tenant's right to the return of the deposit has been extinguished under the Act. The arbitrator will order the return

of the deposit or balance of the deposit, as applicable, whether or not the tenant has applied for arbitration for its return.

Unless the tenant has specifically waived the doubling of the deposit, either on an application for the return of the deposit or at the hearing, the arbitrator will order the return of double the deposit:

- If the landlord has not filed a claim against the deposit within 15 days of the later of the end of the tenancy or the date the tenant's forwarding address is received in writing;
- ***If the landlord has claimed against the deposit for damage to the rental unit and the landlord's right to make such a claim has been extinguished under the Act;***
- If the landlord has filed a claim against the deposit that is found to be frivolous or an abuse of the arbitration process;
- If the landlord has obtained the tenant's written agreement to deduct from the security deposit for damage to the rental unit after the landlord's right to obtain such agreement has been extinguished under the Act;
- whether or not the landlord may have a valid monetary claim [emphasis added].

Section 24(2) of the *Act* stipulates that the right of a landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord

(a) does not comply with section 23 (3) [*2 opportunities for inspection*],

(b) having complied with section 23 (3), does not participate on either occasion, or

(c) ***does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations*** [emphasis added].

In this case the evidence supports the Landlord failed to conduct a move-in inspection and failed to complete a move-in condition inspection report form, as required by section 24(2) of the *Act*. The Landlord was therefore required to return the security deposit to the Tenant within 15 days of the later of the two of the tenancy ending and having received the tenant's forwarding address in writing.

The tenancy ended when the Tenant vacated the property, in accordance with the 1 Month Notice, at the end of September, 2013, and the Landlord is deemed to have received the keys and the Tenant's forwarding address on September 30, 2013, five

days after they were mailed, pursuant to section 90 of the *Act*. Therefore, the Landlord was required to return the deposit to the Tenant no later than October 15, 2013, pursuant to section 38(1) of the *Act*. The Tenant has not received payment for the return of her deposit.

Based on the above, I find that the Landlord(s) has failed to comply with Section 38(1) of the *Act* and that the Landlord(s) is now subject to Section 38(6) of the *Act* which states that if a landlord fails to comply with section 38(1) the landlord must pay the tenant double the security deposit.

Based on the aforementioned, I Order the Landlord to pay the Tenant forthwith, an amount equal to double the security deposit plus interest in the amount of **\$1,500.00** (2 x \$750.00 + \$0.00 interest).

### Conclusion

I HEREBY DISMISS the Landlords' application, without leave to reapply.

The Tenant has been issued a Monetary Order in the amount of **\$1,500.00**. 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: January 27, 2014

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Residential Tenancy Branch

