



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDC MNSD FF

### Introduction

This hearing dealt with an Application for Dispute Resolution file don October 21, 2013, by the Tenants to obtain a Monetary Order for the return of their security deposit; for money owed or compensation for damage or loss under the Act, regulation, or tenancy agreement; and to recover the cost of the filing fee from the Landlords for this application. .

The parties appeared at the teleconference hearing, acknowledged receipt of evidence submitted by the Tenants and gave affirmed testimony. At the outset of the hearing I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each party was provided an opportunity to ask questions about the process however, each declined and acknowledged that they understood how the conference would proceed.

During the hearing each party was given the opportunity to provide their evidence orally, respond to each other's testimony, and to provide closing remarks. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

### Issue(s) to be Decided

Are the Tenants entitled to a Monetary Order?

### Background and Evidence

The parties confirmed they entered into a verbal tenancy agreement that began on August 1, 2009. Rent was payable on the first of each month in the amount of \$2,000.00 and on August 11, 2009 the Tenants paid \$1,000.00 as the security deposit. No condition inspection report forms were completed at move-in or at move-out.

The Tenants initially stated they vacated the property on August 30, 2013, and later stated that they may have had their dates incorrect. They provided written notice to end their tenancy and requested that the Landlords return their security deposit the day they move out; however, the Landlords told the Tenants they would have to wait for their deposit because the Landlords were going away on a cruise.

The Tenants testified that they served the Landlords' real estate agent with their forwarding address and the keys to the rental unit on approximately October 2, 2013, as instructed by the Landlords. They have not received their deposit back.

The Tenants are seeking to recover compensation of \$1,065.00 for an alleged water bill they paid back on July 11, 2011. They confirmed they were required to pay utilities however they argued that all the normal utilities, such as hydro and natural gas, were in their name. They were never given a copy of the water bill they were forced to pay and made no effort to clarify this prior to the end of their tenancy.

The Tenants are also seeking compensation of \$776.84 for supplies purchased to maintain the rental property plus \$7,487.03 for items that were stolen during a break and enter that occurred at the rental unit. They argued that the rental property had a security system but the Landlords failed to make sure it was operational.

The Landlords confirmed they knew the Tenants' were vacating the property and argued that they stayed until the end of September, 2013. The Tenants moved out while the Landlords were away on their cruise from September 25, 2013 to October 16, 2013. The Landlords confirmed the property was up for sale but argued that they told the Tenants to deal with their son during their absence and not their real estate agent. The Landlords confirmed that their real estate agent had full authority to act on their behalf to show their property during their absence. They confirmed receipt of the rental unit keys.

The Landlords confirmed they have not returned the Tenants' deposit and argued that their son was not served the Tenants' forward address; therefore, the first time they received the forwarding address was late October when they received the Tenants' application for dispute resolution. They confirmed they do not have the Tenants' written permission to keep the deposit, they do not have an order authorizing them to keep the deposit, and they have not made application to keep it.

The Landlords stated that they had shown the Tenants the water bill back in 2011 when they paid the bill. They argued that they are not responsible to pay for the items the

Tenants chose to purchase during the tenancy to maintain the property, nor are they responsible for the cost of items that were stolen due to a break and enter. They are of the opinion that the Tenants are required to ensure they secure the property when they are absent and that they should have tenant content insurance.

In closing, the Tenants confirmed they did not have tenant content insurance.

### Analysis

The *Residential Tenancy Act* defines a “**tenancy agreement**” as an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a rental unit, use of common areas and services and facilities, and includes a licence to occupy a rental unit.

Section 91 of the Act stipulates that except as modified or varied under this Act, the common law respecting landlords and tenants applies in British Columbia.

Common law has established that oral contracts and/or agreements are enforceable. Therefore, based on the above, I find that the terms of this verbal tenancy agreement are recognized and enforceable under the *Residential Tenancy Act*.

A party who makes an application for monetary compensation against another party has the burden to prove their claim. Awards for compensation are provided for in sections 7 and 67 of the *Residential Tenancy Act*. Accordingly an applicant must prove the following when seeking such awards:

1. The other party violated the Act, regulation, or tenancy agreement;
2. The violation caused the applicant to incur damage(s) and/or loss(es) as a result of the violation;
3. The value of the loss; and
4. The party making the application did whatever was reasonable to minimize the damage or loss.

Section 88 (b) of the Act, provides that all documents that are required or permitted under this Act to be given to or served on a person , if the person is a landlord, may be served by leaving a copy with an agent of the landlord;

Upon review of the evidence before me, I favor the evidence of the Tenants with respect to service of their forwarding address. I favored the evidence of the Tenants over the Landlords because the evidence indicates the forwarding address, along with the keys

were given to the Landlords' real estate agent. Despite the Landlords' argument that they only received the keys or that they told the Tenants to deal with their son during their absence, the Tenants served an agent of the Landlords, in accordance with section 88(b) of the Act. Accordingly, I find the Landlords' agent was sufficiently served with the Tenants' forwarding address on October 2, 2013.

Based on the foregoing, this tenancy ended September 30, 2013, and the Landlords' Agent was served the Tenants' forwarding on October 2, 2013.

Section 38(1) of the *Act* stipulates that if within 15 days after the later of: 1) the date the tenancy ends, and 2) the date the landlord receives the tenant's forwarding address in writing, the landlord must repay the security deposit, to the tenant with interest or make application for dispute resolution claiming against the security deposit.

In this case the Landlords were required to return the Tenants security deposit in full or file for dispute resolution no later than October 17, 2013. They did neither.

Based on the above, I find that the Landlords have failed to comply with Section 38(1) of the *Act* and that the Landlords are now subject to Section 38(6) of the *Act* which states that if a landlord fails to comply with section 38(1) the landlord may not make a claim against the security deposit and the landlord must pay the tenant double the security deposit.

Based on the aforementioned I find the Tenants have met the burden of proof to establish their claim for the return of their deposit and I award them double their security deposit plus interest in the amount of **\$2,000.00** (2 x \$1,000.00 + \$0.00 interest).

The evidence supports the Tenants were required to pay for utilities and they issued the Landlords a payment for a water bill in July 11, 2011. Upon review of the foregoing, I find there to be insufficient evidence to prove the Landlords breached the Act by collecting a payment for water utilities and there is insufficient evidence to prove the Tenants mitigated this situation by waiting over two years to dispute their payment. Accordingly, I dismiss the claim for reimbursement of a water bill payment, without leave to reapply.

The Tenants seek compensation to recover the cost of goods that were stolen during a break and enter at the rental property. The Tenants confirmed they did not have tenant content insurance and argued that the Landlords should be found at fault because they did not ensure the security system was in working order. I note there is no provision in the Act that requires a landlord to provide a working security alarm system, nor is there any provision in this verbal tenancy agreement. In the absence of tenant content insurance I find the Tenants' failed to mitigate their loss. Accordingly, I find there to be

insufficient evidence to prove the claim for stolen property; and I dismiss that claim without leave to reapply.

The Tenants have been partially successful with their application; therefore I award partial recovery of the \$100.00 filing fee in the amount of **\$50.00**.

### Conclusion

The Tenants have been awarded a Monetary Order in the amount of **\$2,050.00** (\$2,000.00 + \$50.00). 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

