



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### Dispute Codes

For the tenants: MNSD FF

For the landlords: MND MNR MNSD MNDC FF

### Introduction

This hearing was convened as a result of the cross applications of the parties for dispute resolution under the *Residential Tenancy Act* (the “Act”).

The tenants applied for a monetary order for the return of double their security deposit, and to recover their filing fee.

The landlords applied for a monetary order for damage to the unit, site or property, for unpaid rent or utilities, to keep all or part of the security deposit, for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and to recover the filing fee.

The hearing process was explained to the parties and an opportunity was given to ask questions about the hearing process. Thereafter the parties gave affirmed testimony, were provided the opportunity to present their evidence orally and in documentary form prior to the hearing, and make submissions to me. I have reviewed all evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

During the hearing, the landlords confirmed that the tenants were not served with the landlords’ evidence and as a result, the landlords’ evidence was being excluded from the hearing as it was not served in accordance with the rules of procedure. As an alternative, the parties were reminded that they could provide oral testimony as their evidence during the hearing.

### Preliminary and Procedural Matter

At the outset of the hearing, the parties were advised that the landlords' application for damages was being refused, pursuant to section 59(5)(c) of the *Residential Tenancy Act* (*Act*), because their application for dispute resolution did not provide sufficient particulars of their claim for damages, as is required by section 59(2)(b) of the *Act*.

The landlords are at liberty to reapply for damages, however, are reminded to provide a detailed breakdown of their monetary claim for damages and are encouraged to use the Monetary Worksheet available at [www.rto.gov.bc.ca](http://www.rto.gov.bc.ca) when submitting a monetary claim. The landlords may include any additional pages to set out the details of their dispute in their application, as required.

### Issues to be Decided

- Is either party entitled to a monetary order under the *Act*, and if so, in what amount?
- What should happen to the tenants' security deposit under the *Act*?

### Background and Evidence

A month to month tenancy agreement began on April 1, 2012. Monthly rent in the amount of \$2,200.00 was due on the first day of each month. A security deposit of \$1,100.00 was paid by the tenants at the start of the tenancy. The tenants originally stated that they vacated the rental unit on September 30, 2013, and then later indicated that they picked up their dog, dog house and miscellaneous items on October 1, 2013. The landlords stated that the tenants did not remove their personal items until October 4, 2013, which included motorbikes and the tenant's dog.

The tenants are seeking the return of double their security deposit of \$1,100.00 for a total monetary claim of \$2,200.00.

As the landlord's claim for damages was refused as described above, and the landlords are at liberty to reapply for damages, the landlords' remaining monetary claim for the matter before me is comprised of \$2,200.00 for unpaid rent for the month of October 2013.

During the hearing, the tenants stated that they provided their written one month notice to end the tenancy dated September 6, 2013. The landlords testified that they received that notice from the tenants on September 17, 2013. The tenants stated that the

landlords advised them on September 15<sup>th</sup> or 16<sup>th</sup> of 2013 that the landlord would not be re-renting the rental unit, which the landlords denied. The landlords are seeking loss of October 2013 rent in the amount of \$2,200.00 due to the tenants failing to provide proper notice to end the tenancy under the *Act*.

The tenants testified that they provided their written forwarding address to the landlord on September 30, 2013, which the landlords disputed. The landlords testified that the tenants provided their written forwarding address on October 1, 2013. The landlords applied for dispute resolution claiming towards the tenants' security deposit on October 15, 2013. Neither party submitted a copy of the tenants' written forwarding address provided to the landlords in evidence.

### Analysis

Based on the documentary evidence, the oral testimony, and on the balance of probabilities, I find the following.

#### *Test for damages or loss*

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in sections 7 and 67 of the *Act*. Accordingly, an applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

**Tenants' claim for double their security deposit** – Section 38 of the *Act*, requires that a landlord must return or make a claim against the security deposit within 15 days of the later of the end of tenancy and the date the forwarding address is provided. Even if I accept the earlier of the two dates provided during the hearing by the parties as the date the tenants provided their written forwarding address to the landlords, September 30, 2013, the landlords still applied to claim towards the tenants' security deposit in accordance with section 38 of the *Act* within 15 days. Therefore, **I find** the landlords **did not** breach section 38 of the *Act* by filing a claim within 15 days of receiving the tenants' written forwarding address. Furthermore, **I find** that the 15 day timeline did not start until

October 1, 2013 based on the testimony provided during the hearing where the tenants admitted that they still had items left at the rental unit and did not pick those up until October 1, 2013. As a result, **I find** the tenants are not entitled to the return of double their original security deposit under the *Act*. Therefore, the tenants' application is **dismissed** in full, without leave to reapply.

**Landlords' claim for loss of October 2013 rent and the tenants' security deposit -**

The landlords have claimed \$2,200.00 for loss of October 2013 rent due to the tenants failing to provide proper notice to end the tenancy in accordance with section 45 of the *Act*. The tenants testified that they provided their written one month notice to end the tenancy (the "one month written notice") to the landlords dated September 6, 2013. Section 45 of the *Act* states:

**45** (1) A tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that

**(a) is not earlier than one month after the date the landlord receives the notice, and**

**(b) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.**

(4) A notice to end a tenancy given under this section must comply with section 52 *[form and content of notice to end tenancy]*.

**[emphasis added]**

Based on the above, **I find** the tenants would have had to have dated and served their one month written notice no later than August 31, 2013, to avoid owing rent for the month of October 2013. Therefore, **I find** the tenants breached section 45 of the *Act* by providing late notice and that the earliest the tenancy would end based on the tenants' written notice dated September 6, 2013, would have been October 31, 2013. Given the above, **I find** the landlords have met the burden of proof in establishing that the tenants breached the *Act* and owe \$2,200.00 for loss of rent for the month October 2013.

As the tenants' claim did not have merit, **I do not grant** the tenants the recovery of their filing fee.

As the landlords' claim did have merit, **I grant** the landlords the recovery of their filing fee in the amount of **\$50.00**.

The landlords continue to hold the tenants' security deposit of \$1,100.00, which has accrued no interest since the start of the tenancy.

**I find** that the landlords have established a total monetary claim of **\$2,250.00** comprised of \$2,200.00 in loss of October 2013 rent, plus the \$50.00 filing fee. **I ORDER** the landlords to retain the tenants' full security deposit of \$1,100.00 in partial satisfaction of the landlords' claim. **I grant** the landlords a monetary order pursuant to section 67 of the *Act*, for the balance owing by the tenants to the landlords in the amount of **\$1,150.00**. This order must be served on the tenants and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

### Conclusion

The application of the tenants has been dismissed in full, without leave to reapply.

The landlord established a total monetary claim of \$2,250.00 and was ordered to retain the tenants' security deposit of \$1,100.00 in partial satisfaction of the landlords' claim. The landlords have been granted a monetary order pursuant to section 67 of the *Act*, for the balance owing by the tenants to the landlords in the amount of \$1,150.00. This order must be served on the tenants and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

This decision is final and binding on the parties, unless otherwise provided under the *Act*, and 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: February 3, 2014

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Residential Tenancy Branch

