



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNSD, FF

### Introduction

This hearing dealt with the tenants' application for dispute resolution under the Residential Tenancy Act (the "Act") seeking a monetary order for a return of their security deposit, doubled, and for recovery of the filing fee.

The tenants attended the telephone conference call hearing; the landlord did not attend.

The tenants testified that they served the landlord with the Application for Dispute Resolution and Notice of Hearing by registered mail on October 30, 2013. The tenants supplied testimony of the tracking number of the registered mail and further stated that the landlord had signed for and collected the registered mail.

Based upon the submissions of the tenants, I find the landlord was served notice of this hearing in a manner complying with section 89(1) of the Act and the hearing proceeded in the landlord's absence.

The tenants 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 written 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 tenants entitled to a monetary order, which includes their security deposit, and to recover the filing fee?

### Background and Evidence

The written tenancy agreement provided by the tenants show that this tenancy began on December 1, 2011, monthly rent was \$1250, and a security deposit of \$1250 was paid by the tenants on or about December 1, 2011. Handwritten notations on the

tenancy agreement suggest that a pet damage deposit of \$500 was included with the security deposit of \$1250.

The tenants testified that the tenancy ended on May 20, 2013.

The tenants testified that the landlord was provided the tenants' written forwarding address by registered mail, which was signed for and collected by the landlord on September 10, 2013. The tenants provided documentation showing the landlord's signature and delivery date of the registered mail, along with the tracking number.

The tenants testified that the landlord has not returned their security deposit and are seeking monetary compensation of \$2500, which is their security deposit of \$1250, doubled.

The tenants also submitted that the landlord had informed them that she had filed for bankruptcy; however, despite requesting the bankruptcy trustee's name, the landlord did not provide this or any further information.

The tenants further submitted that they searched the bankruptcy court's database, and the landlord's name was not found.

The tenants' additional relevant documentary evidence included the search results of the bankruptcy court's database and a copy of an email communication between the tenants and the landlord.

I have no evidence before me that the landlord has filed an application for dispute resolution claiming against the tenants' security deposit.

### Analysis

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

Under section 38(1) of the Act, at the end of a tenancy, unless the tenant's right to a return of their security deposit has been extinguished, a landlord is required to either return a tenant's security deposit or to file an application for dispute resolution to retain the security deposit within 15 days of the later of receiving the tenant's forwarding address in writing and the end of the tenancy. If a landlord fails to comply, then the landlord must pay the tenant double the security deposit, pursuant to section 38(6) of the Act.

I do not find the tenants' right to a return of their security deposit has been extinguished.

In the case before me, the undisputed evidence shows that the tenancy ended on May 20, 2013, and that the landlord received the tenants' written forwarding address on September 10, 2013, the landlord has not applied for dispute resolution claiming against

the security deposit, and has not returned any portion of the tenants' security deposit, in breach of section 38 of the Act.

I therefore grant the tenants' application for dispute resolution and order that the landlord pay the tenants double their security deposit.

I find that the tenant are entitled to monetary award in the amount of \$2550, comprised of their security deposit of \$1250, doubled to \$2500, and for recovery of the filing fee of \$50 due to the tenants' successful application, and are therefore entitled to a monetary order in that amount.

### Conclusion

The tenants' application has been granted.

I therefore grant the tenants a final, legally binding monetary order, pursuant to section 67 of the Act, in the amount of \$2550, which I have enclosed with the tenants' Decision.

Should the landlord fail to pay the tenants this amount without delay after being served the order, the 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 subject to recovery 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 respondent.

Dated: February 05, 2014

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Residential Tenancy Branch

