



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNSD, MNDC, FF

### Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties.

The Landlord filed their Application requesting a monetary order for money owed or compensation under the Act or tenancy agreement, for alleged damages or cleaning at the rental unit, for an order to keep the security deposit in partial satisfaction of the claim, and to recover the filing fee for the Application.

The Tenants filed for a monetary order for return of double the security deposit under section 38 of the Act.

Only the Landlord appeared at the hearing. They gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions to me.

The Tenants had filed their own Application on October 31, 2013, and the Landlord filed their Application on January 30, 2014, and requested their Application be joined to be heard at the same time. However, the Tenants did not appear at the hearing. The Landlord submitted registered mail receipts indicating the Tenants had each been served by registered mail, sent on January 30, 2014. Under the Act the Tenants were deemed served five days later. This, combined with the fact the Tenants had their Application scheduled to be heard at the same time, leads me to conclude the Tenants had notice of the hearing and were duly served in accordance with the Act.

I have reviewed all oral and written 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.

### Preliminary Issue

As the Tenants did not appear at the hearing, their Application is dismissed without leave to reapply.

### Issue(s) to be Decided

Is the Landlord entitled to the relief sought?

### Background and Evidence

This tenancy began on May 1, 2013, for an initial fixed term of three months, with the parties entering into a written tenancy agreement. The Tenants paid a security deposit of \$420.00 on April 18, 2013, and the monthly rent was \$850.00, payable on the first day of each month.

The Landlord testified she did not perform an incoming or outgoing condition inspection report. The Landlord testified that the Tenants accepted the rental unit with all the deficiencies they discussed at the beginning of the tenancy.

The Landlord testified she had complaints from the neighbours that the Tenants were partying all the time and creating disturbances. The Landlord alleged the Tenants were on the roof of the rental unit at one point, and damaged a section of the gutters. The Landlord alleged the gutters were damaged when the Tenants climbed up onto the roof. The Landlord testified she did not witness any of these activities, but had heard about the parties from the neighbours and that the Tenants had been on the roof.

The Landlord wrote a letter to the Tenants telling them must leave the rental unit. The Landlord then issued a one month Notice to End Tenancy to the Tenants alleging cause. The Tenants vacated the rental unit on or about September 30, 2013. The Landlord testified she received the forwarding address from the Tenants for the return of the security deposit in October of 2013.

The Landlord is claiming \$194.25 for the repair of the gutter and estimates it will cost \$200.00 to perform the carpet cleaning.

The Landlord sent the Tenants a partial refund of the security deposit in the amount of \$115.75, on or about November 1, 2013.

### Analysis

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.

In this instance, the burden of proof is on the Landlord to prove the existence of the damage/loss and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the Tenants. Once that has been established, the Landlord must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the Landlord did everything possible to minimize the damage or losses that were incurred.

Based on all of the above, the evidence and testimony, and on a balance of probabilities, I find as follows.

I find the claims of the Landlord must be dismissed due to insufficient evidence.

The Landlord has failed to prove that the Tenants did any damage to the rental unit. The Landlord might have provided evidence, for example, in the form of photographs of the alleged damage to the rental unit, or might have provided affidavits from the neighbours about what they witnessed. However, I do not find the Landlord can rely on hearsay testimony (repeating statements told to her by a third party), to prove the claims made against the Tenants.

Furthermore, even if I were to allow the claims of the Landlord (which I do not), the Landlord has still failed to prove the actual costs for these, such as to clean the carpets, as only an estimate was provided in evidence and the Landlord acknowledged this work had not been done.

As to the disposition of the remainder of the security deposit, I am directed by the *Act* and policy guidelines to deal with the security deposit in the absence of the Tenants.

Here there was no evidence to show that the Tenants had agreed, in writing, that the Landlord could retain any portion of the security deposit.

There was also no evidence to show that the Landlord had applied for arbitration, within 15 days of the end of the tenancy or receipt of the forwarding address of the Tenants, to retain a portion of the security deposit, as required under section 38.

By failing to perform incoming or outgoing condition inspection reports in accordance with the *Act*, the Landlord extinguished the right to claim against the security deposit for damages, pursuant to sections 24(2) and 36(2) of the *Act*.

Under the law I must find the Landlord has breached section 38 of the *Act* due to the failure to file the Application or return the deposit to the Tenants within the required time limits. I also note that under section 4 of the tenancy agreement signed with the Tenants the Landlord was under an obligation to deal with the deposit in this manner.

The security deposit is held in trust for the Tenants by the Landlord. At no time does the Landlord have the ability to simply keep the security deposit because they feel they are entitled to it or are justified to keep it.

The Landlord may only keep all or a portion of the security deposit through the authority of the Act, such as an order from an Arbitrator, or the written agreement of the Tenant. Here the Landlord did not have any authority under the Act to keep any portion of the security deposit. Therefore, I find that the Landlord is not entitled to retain any portion of the balance of the security deposit.

Furthermore, having made the above findings, I must Order, pursuant to section 38 and 67 of the Act and the policy guidelines to the Act, that the Landlord pay the Tenants the sum of **\$608.50**, comprised of double the security deposit less the amount already paid ( $\$420.00 - \$115.75 = \$304.25$  and  $2 \times \$304.25 = \$608.50$ ).

As a result the Tenants have a monetary order for double the balance due of the security deposit. The monetary order must be served on the Landlord and it may be enforced in the Provincial Court of British Columbia.

This decision is final and binding on the parties, except as 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: March 07, 2014

---

Residential Tenancy Branch

