



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      For the landlord: MNSD, MNR, MNDC, FF  
For the tenant: MNSD, FF

### Introduction

This was the reconvened hearing dealing with the parties' respective applications for dispute resolution under the Residential Tenancy Act (the "Act").

The landlord applied for authority to retain the tenant's security deposit, a monetary order for unpaid rent, for money owed or compensation for damage or loss, and for recovery of the filing fee.

The tenant applied for a return of her security deposit, doubled, and for recovery of the filing fee.

This hearing began on January 30, 2014, before another Arbitrator and dealt only with issues surrounding the service of the applications and evidence. The original Arbitrator did not hear any of the merits of either application and was not seized of either file, as shown by the Interim Decision entered by that Arbitrator.

All parties attended the reconvened telephone conference call hearing. The hearing process was explained to the parties and an opportunity was given to ask questions about the hearing process. Thereafter all parties were provided the opportunity to present their evidence orally, refer to documentary evidence submitted prior to the hearing, make submissions to me and respond to the other's evidence.

At the outset of the hearing, neither party raised any issues regarding service of the application or the evidence.

I have reviewed the oral and written evidence of the parties 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

1. Are the landlords entitled to authority to retain the tenant's security deposit, further monetary compensation, and to recover the filing fee?
2. Is the tenant entitled to recovery of her security deposit, doubled, and to recover the filing fee?

Background and Evidence

I heard undisputed evidence that this tenancy began on August 1, 2013, ended on November 30, 2013, monthly rent was \$1600, and the tenant paid a security deposit of \$800 at the beginning of the tenancy.

I also heard testimony that the landlords have returned \$566.50 from the security deposit of \$800.

***Landlords' application-***

The landlords' monetary claim is \$4000. In explanation, the landlords submitted that \$800 was to have the tenant's security deposit returned to them, \$1600 for rent the month prior to the tenancy starting, and the balance in unpaid rent or damages, due to having to take the first tenants who applied after the tenancy ended.

In support of their application, the landlord submitted that the tenant was to move into the rental unit in July 2013, but as the tenant was unable to leave her previous tenancy prior to July 30, 2013, they held the rental unit open in order to accommodate the tenant's schedule.

The landlord submitted that as they held the rental unit open until the tenant could move in, they are entitled to the rent for July.

The landlord submitted that they received notice from the tenant on November 3, 2013, that she was vacating the rental unit at the end of November; therefore, the tenant provided insufficient notice that she was vacating. The landlords submitted that they were forced to take the first tenants to come along for December, and that they are now having problems with the next tenants, for which the tenant should compensate them.

The landlords' relevant documentary evidence included a Craigslist posting, advertising the rental unit in June 2013.

***Tenant's application-***

The tenant marked in her application that she was seeking a return of her security deposit; however, in the details of the dispute, the tenant further sought moving fees of \$1000, and costs associated with filing her application, for a total of \$2700.

The tenant submitted that she provided the landlords with her written forwarding address on November 30, 2013, and received a partial refund on January 3, 2014, in the amount of \$566.50. The tenant disagreed with the deductions taken by the landlords, as she did not agree that she owed for utilities and the landlords' filing fee, which was listed as \$56.50. The cheque by the landlords was dated December 15, 2013; however there was no evidence as to when the cheque was mailed.

There was no evidence that a move-in or move-out inspection had occurred or that the landlords completed condition inspection reports.

The tenant also submitted that she was entitled to moving fees, \$500 for the move-in fees and \$500 for the move-out fees, as she was promised storage space and a garage by the male landlord.

The tenant's relevant documentary evidence included a written submission, a copy of the cheque from the landlord, the written notice to the landlord providing a reason she was ending the tenancy, text message communication between the parties, the written tenancy agreement, and photos of the condition of the rental unit showing the lack of storage space.

### Analysis

In a claim for damage or loss under the Act, which falls in sections 7 and 67, or tenancy agreement, the claiming party, both parties in this case, has to prove, with a balance of probabilities, four different elements:

**First**, proof that the damage or loss exists, **second**, that the damage or loss occurred due to the actions or neglect of the respondent in violation of the Act or agreement, **third**, verification of the actual loss or damage claimed and **fourth**, proof that the claimant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

Where the claiming party has not met each of the four elements, the burden of proof has not been met and the claim fails.

### ***Landlords' application-***

I find the landlords have provided no legal basis under the Act for their monetary claim.

The written tenancy agreement shows the tenancy starting on August 1, 2013; therefore, the tenant's obligation to pay rent started on that date, and therefore the landlords are not entitled to receive rent from this tenant the month before the tenancy started. I therefore dismiss the landlords' claim for rent for the month of July.

As to the landlords' claim that the tenant should pay the landlords monetary compensation as they are experiencing problems with their next tenants, I again find no

basis for awarding the landlords compensation. The choice of a new tenant was for the landlords to make, and I cannot find any logical reason why this tenant should be responsible for the actions of complete strangers.

I therefore dismiss the landlords' claim for compensation from issues with the subsequent tenants.

As to the landlords' claim to have the tenant's security deposit returned to them, a security deposit is collected by the landlord and held in trust for the tenant during the tenancy; likewise the security deposit must be dealt with in accordance with section 38 of the Act at the end of the tenancy.

I am unable to award the landlords a return of the tenant's security deposit only to order the landlords return the security deposit to the tenant in accordance with section 38.

I therefore decline to award the landlords a monetary award for a security deposit.

Due to the above, I dismiss the landlords' application, including their request to recover the filing fee, without leave to reapply.

### ***Tenant's application-***

Under section 36 of the Act, when a landlord fails to properly complete a condition inspection report, the landlord's claim against the security deposit for damage to the property is extinguished. In this case, the landlord applied to keep the security deposit in partial compensation of monetary claims for lost revenue and for other costs. As the landlord's claim was not for damage to the property, I find that the landlord complied with the requirement under section 38 to make an application to keep the deposit even before the tenancy ended. The tenant is therefore not entitled to double recovery of the deposit, and I dismiss that portion of the tenant's application.

The landlords retained the amount of \$233.50 from the tenant's security deposit for utility bills and their filing fee. I find the landlords failed to submitted evidence that the tenant owed for unpaid utilities and as I have dismissed the landlords' claim for recovery of their filing fee, I order the landlords to return the amount they withheld, or \$233.50.

### ***Moving costs-***

In these circumstances the tenant opted to end the tenancy early and I do not find that the tenant submitted sufficient evidence that the landlord breached a material term of the tenancy agreement so as this tenancy ended early by that breach. I therefore find I have no authority under the Act to compensate the tenant for her decision to end the tenancy early and I dismiss her claim for \$1000.

As to the tenant's claim for the costs of a USB port, the *Act* does not provide for the reimbursement of expenses related to disputes arising from tenancies other than the filing fee. I therefore dismiss her claim for \$50 for a USB port.

As I have found some merit with the tenant's application, I award her recovery of her filing fee of \$50.

Due to the above, I find the tenant is entitled to a monetary award of \$283.50, comprised of the balance of her security deposit of \$233.50 and the filing fee of \$50.

### Conclusion

The landlords' application is dismissed.

The tenant's application for monetary compensation is partially granted.

I grant the tenant a final, legally binding monetary order pursuant to section 67 of the *Act* for the amount of \$283.50, which I have enclosed with the tenant's Decision.

Should the landlords fail to pay the tenant this amount without delay, the monetary order must be served upon the landlords and may be filed in the Provincial Court of British Columbia (Small Claims) for enforcement as an Order of that Court. The landlords are advised that costs of such enforcement are recoverable from the landlords.

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: April 20, 2014

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Residential Tenancy Branch

