



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNSD, MNDC, FF

### Introduction

This hearing dealt with applications by both the tenants and the landlord. The tenants applied for the return of their security deposit. The landlord applied for a monetary order for money owed or compensation for damage or loss under the Act, Regulation, or tenancy agreement; to retain the security deposit; and to recover the RTB filing fee.

Both the landlord and tenants attended the teleconference hearing and gave affirmed evidence.

### Issue(s) to be Decided

- Are the tenants entitled to the return of their security deposit?
- Is the landlord entitled to a monetary order for money owed or compensation for damage or loss under the Act, Regulation, or tenancy agreement?

### Background and Evidence

The tenancy agreement signed by the parties on August 5, 2013 indicates the tenancy started on September 1, 2013 and was for a one-year fixed term ending August 31, 2014. The tenants were obligated to pay rent of \$1,250.00 per month payable in advance on the first day of the month (not including utilities), and a security deposit of \$625.00.

The tenants gave evidence that the parties verbally agreed in February 2014 that the tenancy would end April 1, 2014 as long as there were new tenants for April. The tenants' evidence is that they agreed to help find new tenants by showing the rental unit to prospective tenants.

The tenants gave evidence that the landlord told them there were new tenants moving in April 1, 2014. The tenants moved out on March 30, 2014 and a move-out inspection was carried out with the landlord the same day. They say no problems were identified at the inspection.

The tenants gave evidence that they provided their forwarding address to the landlord in writing on March 30, 2014.

The tenants gave evidence that they left three items (a barbeque, a TV stand, and a basketball hoop) at a "local drop off spot" nearby at the corner of a street and a footpath, on public land.

The tenants' evidence is that they were not told why they were not getting their security deposit back until April 16<sup>th</sup>, when the landlord told them they had not paid their hydro bill. They have now paid the hydro.

The landlord gave evidence that the tenants called her in mid-February to say they wanted to move out. At first, only one of the tenants intended to move out. The landlord advised them that the remaining tenant did not qualify to take over the lease by herself because of her income. The second tenant then advised she would get a roommate, but a few days later advised that she would be moving out too. The landlord says the tenants told her they would be moving out at the end of March or the end of April, but did not provide a specific date.

The landlord gave evidence that she told the tenants she would try to find new tenants. She advertised the property on four websites, and updated the ads every week or two to move them to the top of the listings. She says there were showings but no applicants. Her evidence is that she asked the tenants in the first week of March when they intended to move out, and they told her they were moving at the end of March because they could not afford it.

The landlord gave evidence that she showed the rental unit to prospective tenants in March, but it is a hard time of year to show the rental unit because of the winter snow. She says it is hard to get tenants in the wintertime. The landlord says she found a new tenant on March 16, however the new tenant had to give one month's notice at their old place and therefore did not start their tenancy until April 15, 2014. The landlord says that she had to lower the rent to \$1,175.00 to get a new tenant, and also accept a dog which she had never done before.

The landlord claims a loss of rental income of \$625.00 (because she had no rental income for the period April 1 – April 15) and \$337.50 (because she had to lower the rent by \$75.00 per month for the 4.5 months until the end of the fixed term). Her total claim for lost rental income is therefore \$962.50.

The tenants say they did not know the landlord would be incurring rental losses, and they would have stayed for the month of April if they had known.

The landlord also claims the cost of disposing of items abandoned by the tenants. She disputes that there is a “local drop-off spot” at the end of the road. She says her neighbours moved the items left by the tenants from the “drop-off spot” back to the rental property and she discovered them on April 7<sup>th</sup>. She then had to arrange to have all of the items hauled away. She says it was a trailer-full of stuff, and she knew it all belonged to the tenants because she previously saw it in the house. The landlord provided a removal invoice for \$156.45.

The tenants say the landlord cannot assume that all of the abandoned items belonged to the tenants, since someone up the street was moving at the same time.

The landlord gave evidence that she did not tell the tenants she would return the security deposit; she said they would “settle up”. Also, she did not tell the tenants the rental unit was rented for April 1<sup>st</sup>; she simply told them it had been rented. The landlord agrees the tenants provided their forwarding address in writing on March 30<sup>th</sup> when they filled out a Condition Inspection Report.

There are two versions of the Landlord's Application for Dispute Resolution. Both were date-stamped at the RTB Kelowna office, the first on April 17, 2014 and the second on April 23, 2014.

### Analysis

I accept the landlord's evidence regarding how the tenancy came to an end. I found the landlord to be a credible witness and her version of events was more plausible than that of the tenants. Based on the landlord's evidence, she did not agree to the tenants' moving out before the end of the fixed term. The landlord merely accepted that the tenants were moving out and attempted to mitigate her losses. I find that the landlord took appropriate steps to mitigate her losses by advertising the rental property promptly, and by accepting lower rent and a dog in order to have a new tenant in place as soon as possible.

I find the landlord is therefore entitled to her claim for rental income losses of \$962.50, comprised of \$625.00 for the period April 1 – April 15, 2014 and \$337.50 for having to accept a lower rental amount from her new tenant for the period April 15 through August 31, 2014.

I accept the landlord's evidence that she incurred removal costs as a result of the tenants abandoning at least three large items near the rental property. The tenants' actions led to the neighbours moving a pile of abandoned goods to the rental property, and the landlord then had to deal with them. Even if there were some items moved to the rental property from the "drop-off spot" that did not belong to the tenants, I find it was the tenants' actions in abandoning at least three large items that led the neighbours to move the pile to the rental property. The landlord is therefore entitled to recover her costs of \$156.45. The total amount due the landlord is \$1,118.95.

The process for the return of security deposits is set out in Section 38 of the Act. Pursuant to Section 38(1), the landlord must either repay the security deposit or apply for dispute resolution to make a claim against the security deposit within 15 days of the date the tenancy ends or the date the landlord receives the tenant's forwarding address in writing (whichever is later). Alternatively, pursuant to Section 38(4)(a), a landlord may retain all or part of a security deposit if the tenant agrees in writing.

In this case, I find the tenancy ended on March 31, 2014 and the tenants provided their forwarding address in writing on March 30, 2014. Even if I consider the landlord's Application to have been filed when the first version was received on April 17, 2014, the landlord did not apply for dispute resolution to make a claim against the security deposit within 15 days. Also, the tenants did not agree in writing to the retention of any part of the security deposit. The landlord is therefore obligated to return the entire security deposit to the tenants.

According to Section 38(6), a landlord who fails to follow Section 38(1) must pay the tenant double the amount of the security deposit. The tenants are therefore entitled to double their \$625.00 security deposit, which is \$1,250.00.

Since both parties have had success in their applications, each will bear their own RTB filing fee. Section 72(2) allows me to set off the amount owing the landlord against the amount owing the tenants. In this case, the tenants owe the landlord \$1,118.95 and the landlord owes the tenants \$1,250.00. The result is that the landlord owes the tenants \$131.05. I grant the tenants a monetary order for that amount. This order may be filed in the Small Claims Court and enforced as an order of that Court.

Conclusion

I grant the tenants a monetary order for \$131.05.

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: August 14, 2014

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Residential Tenancy Branch

