



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

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

### Introduction

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

The tenants applied for a monetary order for a return of their security deposit and for recovery of the filing fee paid for this application.

The landlord applied for a monetary order for unpaid rent and for recovery of the filing fee paid for this application.

This hearing began on May 13, 2014, and dealt only with the tenants' application.

The parties were informed at the original hearing that the hearing would be adjourned in order to consider the issues contained in the landlord's application.

At both hearings, all parties were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, respond each to the other's evidence, and make submissions to me.

The parties confirmed receipt of the other's evidence.

I have reviewed all oral and documentary 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 return of their security deposit and for recovery of the filing fee paid for this application?

Is the landlord entitled to monetary compensation and for recovery of the filing fee paid for this application?

### Background and Evidence

The undisputed evidence shows that this tenancy began on August 1, 2012, ended on December 31, 2013, monthly rent was \$1050, and the tenants paid a security deposit of \$525 on July 25, 2012. The landlord has retained the security deposit.

The rental unit was located in a home in which the landlord also resided, in another separate unit, and that the landlord rented another, separate unit in the residential property.

#### *Tenants' application-*

The tenants submitted that they provided their written forwarding address to the landlord on December 30, 2014, on the condition inspection report at the move-out inspection and that the landlord has failed to return their security deposit.

The tenant's monetary claim is \$525 for the security deposit and \$50 for the filing fee paid for this application.

In response, the landlord confirmed receiving the tenant's written forwarding address on the date stated by the tenants.

#### *Landlord's application-*

The landlord's monetary claim is \$3576, comprised of unpaid utilities accumulated during the tenancy and \$50 for the filing fee paid for this application.

In support of his application, the landlord submitted that each time during the tenancy he spoke to the tenants about a payment of the utilities, he was given an excuse as to why they could not pay for the utilities incurred.

The landlord submitted further that the agreement he had with the tenants was that they would pay  $\frac{1}{2}$  of the utilities, and pointed out that as the written tenancy agreement submitted into evidence showed that the utilities was not part of rent, logic would suggest that the tenants owed  $\frac{1}{2}$  of the utilities.

The landlord confirmed that he never submitted any utility bill to the tenants during the tenancy, and only discussed the matter with the tenants.

#### *Tenants' response-*

The tenant submitted that there was never a discussion of utilities during the tenancy, and that there was never a written or verbal demand for payment.

The tenant argued that it is unfair and unreasonable to demand payment at this late date, after the tenancy ended, to demand payment for 18 months' of utility costs.

The tenants also submitted that they never had control of the thermostat, as it was locked in the landlord's portion of the residential property.

*Tenant's witness-*

The witness stated that he was also a tenant during a portion of the time the tenants lived in the rental unit, in a separate rental unit, and that he paid a flat rate for monthly rent, with no mention or demand made or utilities by the landlord.

Analysis

*Tenants' application-*

Under section 38(1) of the Act, at the end of a tenancy a landlord is required to either return a tenant's security deposit or to file an application for dispute resolution to retain the deposits within 15 days of the later of receiving the tenant's forwarding address in writing. Section 38(6) of the Act states that if a landlord fails to comply, or follow the requirements of section 38(1), then the landlord must pay the tenants double the amount of their security deposit.

The undisputed evidence here shows that the tenancy ended on December 31, 2013, the landlord received the tenant's forwarding address on December 30, 2013, and that the landlord did not file an application to retain the tenants' security deposit within 15 days of December 31, 2013 or return the deposit in full.

Residential Tenancy Branch Policy Guideline #17 states that unless the tenant has specifically waived the doubling of the deposit, the Arbitrator will order the return of double the deposit. I agree with this policy and find that the tenants have not specifically waived the doubling of their security deposit.

I therefore grant the tenants' application for dispute resolution and order that the landlord pay the tenants double their security deposit of \$525.

Pursuant to section 72(1) of the Act, I also order that the landlord pay the tenants their filing fee for this application in the amount of \$50.

Due to the above, I find the tenants are entitled to a total monetary award of \$1100, comprised of their security deposit of \$525, doubled to \$1050 and the filing fee of \$50.

*Landlord's application-*

In a claim for damage or loss under the Act, which falls in sections 7 and 67, or tenancy agreement, the claiming party 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.

In this case, the written tenancy agreement does not show that utilities were included with the monthly rent and that the document is silent as to the matter of utilities. I therefore find that the matter of responsibility for the utilities is not expressed in a manner that clearly communicates the rights and obligations under it.

I do not find a provision in the tenancy agreement that the tenants were to pay  $\frac{1}{2}$  of the utilities to the landlord, or that this was the amount owed by the tenants. When considering that there was a second rental unit in the residential property, also shared by the landlord, in other words, three separate living accommodations, I do not find it reasonable to assume that the tenants would be responsible for  $\frac{1}{2}$  of the utilities.

Therefore I find the expectation regarding the payment of utilities does not comply with section 6 of the Act, is therefore not enforceable, and I therefore dismiss the landlord's request for unpaid utilities of \$3576, as described in their monetary claim.

Even had I not dismissed the landlord's claim due to an unclear term of the tenancy agreement, I would still make the same decision to dismiss as I found that it unreasonable that the landlord would attempt to claim for alleged losses for the entire tenancy, 17 month tenancy, three months after the tenancy ended. I therefore find the landlord failed to take reasonable steps to minimize his loss, step 4 of his burden of proof.

As I have dismissed the landlord's monetary claim, I decline to award him recovery of the filing fee.

### Conclusion

The tenants' application has been granted as I have found they are entitled to a monetary award of \$1100.

The tenants are granted a monetary order in the amount of \$1100 and it is enclosed with their Decision.

Should the landlord fail to pay the tenants this amount without delay, the order may be served upon the landlord and 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 recoverable from the landlord.

The landlord's application is dismissed.

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: July 29, 2014

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Residential Tenancy Branch

