



# 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 the landlords' application for dispute resolution under the Residential Tenancy Act (the "Act"). The landlords applied for authority to retain the tenants' security deposit, for a monetary order for money owed or compensation for damage or loss, and for recovery of the filing fee paid for this application.

Landlord JQ and tenant JP attended the teleconference hearing, the hearing process was explained and they were given an opportunity to ask questions about the hearing process.

The evidence was discussed, the landlord confirmed providing no documentary evidence and the tenant confirmed that his documentary evidence was not provided to the landlord.

Thereafter both parties 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 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 landlords entitled to retain the tenants' security deposit, further monetary compensation, and for recovery of the filing fee paid for this application?

### Background and Evidence

The undisputed evidence of the parties was that this tenancy began on June 1, 2013, ended on April 1, 2014, monthly rent was \$1750, and the tenants paid a security deposit of \$875, which is being retained by the landlords.

The landlords' monetary claim is \$1000.

When asked to explain, the landlord submitted that the tenants left the hot tub at the rental unit empty and not used over the winter months, which caused the hot tub to become irreparable. The landlord submitted that the tenants failed to winterize the hot tub, the procedure for which was to “blow out the tubes”.

The landlord submitted that the hot tub was 11 years old, and due to this, they had to replace the hot tub.

*Tenant’s response to the landlord’s evidence-*

The tenant submitted that the landlords were not willing to repair the hot tub after a repairman said the hot tub was not worth fixing. The tenant explained that the heater core broke and the electricity kept tripping, due to the hot tub. The tenant submitted that they followed the instructions of the landlord, which was to empty the hot tub and turn off the breaker, so that the landlords could have a look at the hot tub in the spring.

The tenant submitted further that he was never given instructions as to how to winterize the hot tub.

In response, the landlord submitted that the tenant had discussions with her husband, the other landlord, and that the tenant agreed to repair the hot tub.

Analysis

Under section 7(1) of the Act, if a landlord or tenant does not comply with the Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other party for damage or loss that occurs as a result, so long as the applicant verifies the loss, as required under section 67. Section 7(2) also requires that the claiming party do whatever is reasonable to minimize their loss.

In this case, I find that the landlord submitted insufficient evidence that the tenants have violated the Act or the tenancy agreement. I found the email from this landlord to this tenant instructing the tenant to empty the hot tub for the winter and to switch off the breaker to be not only compelling, but that it substantiated the tenant’s position that he was following the landlord’s instructions.

I also find that it would be reasonable to instruct the tenants on the method of winterizing the hot tub, and I find that the landlord submitted insufficient evidence that they provided any such instructions to the tenants.

I also find that the landlords, absence any proof, failed to substantiate that they have sustained a loss or to provide any proof that the tenants actually damaged the hot tub.

Due to the above, I dismiss the landlords’ application for monetary compensation, without leave to reapply, including their request to recover the filing fee.

As I have dismissed the landlords' application claiming against the tenants' security deposit, I order that they return to the tenants their security deposit of \$875, in full, immediately.

Conclusion

The landlords' application is dismissed and I have ordered them to return the tenants' security deposit forthwith.

Due to this order, pursuant to section 67 of the Act, I award the tenants a monetary order in the amount of \$875, which is enclosed with the tenants' Decision.

Should the landlords fail to pay the tenants this amount without delay, the order may be served upon the landlords and 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* and is being mailed to both the applicants and the respondents.

Dated: August 6, 2014

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Residential Tenancy Branch

