



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Dispute Codes:**

MNSD; OLC; FF

### **Introduction**

This is the Tenants' application for a monetary order for double the security deposit; an Order that the Landlord comply with the Act, regulation or tenancy agreement; and to recover the cost of the filing fee from the Landlord.

The parties gave affirmed testimony at the Hearing.

It was determined that the Tenants sent the Landlord the Notice of Hearing documents and copies of their documentary evidence by registered mail, sent on April 14, 2014. It was also determined that the Landlord sent the Tenants his documentary evidence by registered mail, sent August 11, 2014.

### **Preliminary Matters**

The Tenants applied for an Order that the Landlord comply with the Act, regulation or tenancy agreement; however, they did not indicate what section of the Act, regulation or tenancy agreement they sought the Landlord to comply with. In any event, the tenancy is ended and therefore, this portion of their Application is dismissed.

### **Issues to be Decided**

- Are the Tenants entitled to a monetary order for double the security deposit pursuant to the provisions of Section 38 of the Act?

### **Background and Evidence**

This tenancy ended on February 28, 2014. The Tenants paid a security deposit in the amount of \$800.00 on or about May 29, 2011.

Both parties were present for a move-in condition inspection at the beginning of the tenancy; however at the end of the tenancy no Condition Inspection Report was completed that complies with the provisions of the regulation.

The Tenants testified that they sent the Landlord a text on February 23, 2014, providing their forwarding address and asking for return of the security deposit. They stated that they sent another text message to the Landlord on March 4, 2014, repeating their request for return of the security deposit.

The Tenants testified that on March 13, 2014, they received an e-transfer in the amount of \$400.00 from the Landlord, which they did not accept because it was not the full amount of the security deposit. The Tenants stated that they sent the Landlord a letter by express post providing their forwarding address and seeking return of the security deposit. The Tenants stated that the tracking system indicated that this letter was delivered to the Landlord on March 25, 2014. The Tenants stated that the Landlord has not returned the full security deposit.

The Landlord stated that the parties had a good relationship, so he did not complete a Condition Inspection at the end of the tenancy. He stated that the Tenants' dogs were not properly house trained and that he had to replace a section of carpet which had been destroyed by the dogs. The Landlord stated that the parties had a verbal agreement that the Tenants would hire a professional cleaner at the end of the tenancy, but the Tenants did not do so. He stated that the Tenants were in a hurry to move out and did not do a good job with cleaning.

The Landlord testified that he sent another e-transfer to the Tenants in the amount of \$550.00 or \$575.00 "a couple of weeks after" he sent the first one, but the Tenants rejected it.

The Tenants stated that they agreed that the Landlord could take \$194.25 off the deposit for cleaning the rental unit at the end of the tenancy.

### **Analysis**

A security deposit is held in a form of trust by the Landlord for the Tenant, to be applied in accordance with the provisions of the Act.

Section 38(1) of the Act provides that (unless a landlord has the tenant's consent to retain a portion of the security deposit) at the end of the tenancy and after receipt of a tenant's forwarding address in writing, a landlord has 15 days to either:

1. repay the security deposit in full, together with any accrued interest; or

2. make an application for dispute resolution claiming against the security deposit.

Based on the affirmed testimony of both parties, I find that the Landlord did not return the deposit in full, or file an application against it, within 15 days of the date that the Tenants provided their forwarding address in writing (March 25, 2014). I further find that the Landlord did not comply with Section 35 of the Act regarding an end of tenancy Condition Inspection. Section 36(2) of the Act provides that a landlord extinguishes his right to claim against the security deposit if he does not comply with Section 35 of the Act. The Landlord retains the right to file an application for damages under Section 67 of the Act, if he so desires.

Section 38(6) of the Act provides that if a landlord does not comply with Section 38(1) of the Act, the landlord **must** pay the tenant double the amount of the security deposit. The Tenants agreed that the Landlord could retain \$194.25 of the security deposit, and therefore I find that the Tenants are entitled to a monetary order calculated as follows:

Security deposit	\$800.00
Less cleaning cost	<u>-\$194.25</u>
Subtotal	\$605.75
Compensation (Section 38)	<u>      x 2      </u>
TOTAL	<b>\$1,211.50</b>

The Tenants have been successful in their application and I find that they are entitled to recover the cost of the **\$50.00** filing fee from the Landlord.

### **Conclusion**

I hereby grant the Tenants a Monetary Order in the amount of **\$1,261.50** for service upon the Landlord. This Order may be filed in the Provincial Court of British Columbia (Small Claims) and enforced as an Order of that Court.

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: September 17, 2014

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Residential Tenancy Branch

