



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### Dispute Codes:

MNSD, MNDC, FF

### Introduction

This was a cross-application hearing.

This hearing was scheduled in response to the tenant's August 7, 2014 Application for Dispute Resolution, in which the tenants have requested return of double the \$700.00 security deposit and to recover the filing fee from the landlord for the cost of this Application for Dispute Resolution.

On September 16, 2014 the landlord applied requesting compensation for the cost of hiring a property management company, to retain the security deposit and to recover the filing fee cost from the tenants.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the evidence and testimony provided.

### Issue(s) to be Decided

Are the tenants entitled to return of double the security deposit in the sum of \$1,400.00?

Is the landlord entitled to compensation for the cost of hiring a property management company in the sum of \$708.75?

May the landlord retain the security deposit?

### Background and Evidence

The tenancy commenced on May 1, 2014; it was a fixed term to April 2015. Rent was \$1,400.00 due on the 1<sup>st</sup> day of each month. A security deposit in the sum of \$700.00 was paid.

The parties agreed that on May 15, 2014 the tenants contacted the landlord to say they were moving out due to constant noise. The tenants said they were told the rental unit was quiet, but after moving in they felt deceived by the landlord, as there were noise disturbances at all hours of the day and night. The landlord denied this was the case.

The tenants paid rent to the end of June 2014. The tenants relinquished their keys to the landlord on June 15, 2014. The landlord confirmed that he called the tenants, to request the tenant's forwarding address. The tenants sent the address to the landlord, via text message, on June 7, 2014. A check of the date was completed by the tenants during the hearing.

There was no dispute that the tenant's application for dispute resolution was received by the landlord on August 8, 2014. The application was sent via registered mail and the landlord confirmed receipt on that date.

The landlord applied claiming against the security deposit on September 16, 2014. The landlord hired a property management company to rent the unit. An invoice in the sum of \$708.75 issued on July 1, 2014, was supplied a proof of the cost for placing a tenant in the rental unit property. The landlord has claimed the cost of the property management service.

### Analysis

When making a claim for damages under a tenancy agreement or the Act, the party making the allegations has the burden of proving their claim. Proving a claim in damages requires that it be established that the damage or loss occurred, that the damage or loss was a result of a breach of the tenancy agreement or Act, verification of the actual loss or damage claimed and proof that the party took all reasonable measures to mitigate their loss.

Section 38(1) of the Act determines that the landlord must, within 15 days after the later of the date the tenancy ends and the date the landlord received the tenant's forwarding address in writing, repay the deposit or make an application for dispute resolution claiming against the deposit. If the landlord does not make a claim against the deposit paid, section 38(6) of the Act determines that a landlord must pay a tenant double the amount of security deposit.

From the undisputed testimony I find that the landlord had 2 opportunities to submit a claim against the deposit; after he received the forwarding address by text message on June 7 or after August 8, 2014 when he received the tenant's application for dispute resolution that contained the forwarding address. At the very latest the landlord had until August 23, 2014 to return the security deposit or to submit a claim against the deposit. The landlord did not claim against the deposit until September 16, 2014; outside of the required fifteen day time-frame.

Therefore, I find, pursuant to section 38(6) of the Act that the \$700.00 security deposit must be doubled.

The landlord has claimed the cost of hiring a property management company. However, an applicant can only recover damages for the direct costs of breaches of the Act or the tenancy agreement in claims under Section 67 of the Act. The cost of property management is a choice made by the landlord; as a landlord is not barred from seeking new tenants himself. There was no evidence before me that the landlord was unable to seek new tenants; just as he had with the tenants who vacated the unit. As a result, this portion of the claim is denied and the landlord is at liberty to write the property management cost off as a business expense. Therefore, the landlord's claim is dismissed.

I find that the tenant's application has merit and that the tenants are entitled to recover the \$50.00 filing fee from the landlord for the cost of this Application for Dispute Resolution.

Based on these determinations I grant the tenants a monetary Order in the sum of \$1,450.00. In the event that the landlord does not comply with this Order, it may be served on the landlord, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

### Conclusion

The tenants are entitled to return of double the \$700.00 security deposit.

The tenants are entitled to filing fee costs.

The landlord's claim is dismissed.

This decision is final and binding and 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: March 03, 2015

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Residential Tenancy Branch

