



# 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 was convened as the result of the tenants' application for dispute resolution under the Residential Tenancy Act ("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 tenants attended the telephone conference call hearing; the landlord did not attend.

The tenants testified that they served the landlord with their application for dispute resolution and notice of hearing by registered mail on November 18, 2014. The tenants supplied the receipt showing the tracking number of the registered mail.

Based upon the submissions of the tenants, I find the landlord was served notice of this hearing and the tenants' application in a manner complying with section 89(1) of the Act and the hearing proceeded in the landlord's absence.

I note that the landlord did provide documentary evidence for this hearing, despite their failure to attend.

The tenants 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 tenants entitled to a return of their security deposit and to recovery of the filing fee paid for this application?

### Background and Evidence

The undisputed evidence was that this tenancy began on July 1, 2013, ended on October 31, 2014, and that the tenants paid a security deposit of \$500.00 at the beginning of the tenancy, which has not been returned to the tenants by the landlord.

The tenants submitted that they served their application for dispute resolution requesting a return of their security deposit on the landlord on November 18, 2014, by registered mail, and that the landlord responded with evidentiary submissions received by the Residential Tenancy Branch ("RTB") on June 5, 2015. Those submissions included an incomplete condition inspection report and an assessment of the flooring.

The tenants submitted that despite their request in their application, the landlord has failed to return their security deposit.

### Analysis

Under section 38(1) of the Act, a landlord is required to either return a tenant's security deposit or to file an application for dispute resolution to retain the security deposit within 15 days of the later of receiving the tenant's forwarding address in writing and the end of the tenancy.

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 tenant double the amount of their security deposit.

In this case, the undisputed evidence shows that the tenancy ended October 31, 2014, and the landlord was deemed to have received the tenant's application claiming their security deposit on November 23, 2014, 5 days after it was sent by registered mail on November 18, 2014. At that point, the landlord could very well have made their own application for dispute resolution to claim against the deposit and chose not to.

A legal definition of writing refers to a printed or scripted document, as opposed to spoken word.

I therefore find that the landlord received the tenants' written forwarding address in their printed application on November 23, 2014, the landlord had 15 days from that date to return the tenants' security deposit, and the landlord failed to do so.

I therefore find the tenants are entitled to a return of their security deposit of \$500.00. I have not doubled this amount, as the tenants did not seek the doubling provision either in their application or at the hearing.

I also award the tenant recovery of their filing fee paid for this application, or \$50.00, pursuant to section 72(1) of the Act.

Due to the above, I find the tenants are entitled to a monetary award of \$550.00, comprised of their security deposit of \$500.00 and recovery of their filing fee of \$50.00.

I grant the tenants a final, legally binding monetary order pursuant to section 67 of the Act for the amount of their monetary award of \$550.00, which is enclosed with the tenants' Decision.

Should the landlord fail to pay the tenants this amount without delay, the monetary 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.

### Conclusion

The tenants' application for a return of their security deposit is granted and they have been granted a monetary order in the amount of \$550.00.

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 6, 2015

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Residential Tenancy Branch

