



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes

MNDC MNSD FF

### Introduction

This hearing dealt with an Application for Dispute Resolution filed by the Tenants on January 19, 2015 seeking to obtain a Monetary Order for: money owed or compensation for damage or loss under the Act, regulation, or tenancy agreement; the return of double their security deposit; and to recover the cost of the filing fee from the Landlord for this application.

I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each party was provided an opportunity to ask questions about the process however, each declined and acknowledged that they understood how the conference would proceed.

The hearing was conducted via teleconference and was attended by the female Tenant, the Landlord, and the Landlord's legal advocate an articling student, hereinafter referred to as Advocate. The Tenant and Landlord gave affirmed testimony and confirmed receipt of evidence served by the Landlord. The Tenant confirmed that they had not provided documentary evidence.

The female Tenant, S.K., affirmed that she was representing both herself and the male Tenant, D.K. Therefore, for the remainder of this decision, terms or references to the Tenants importing the singular shall include the plural and vice versa, except where the context indicates otherwise.

During the hearing each party was given the opportunity to provide their evidence orally, respond to each other's testimony, and to provide closing remarks. Following is a summary of the submissions and includes only that which is relevant to the matters before me.

### Issue(s) to be Decided

1. Were the Tenants issued a 2 Month Notice to end tenancy pursuant to section 49 of the Act?
2. If so, are the Tenants entitled to compensation equal to one month's rent?
3. Have the Tenants proven entitlement to the return of double their security deposit?

### Background and Evidence

The undisputed evidence was that the Tenants entered into subsequent fixed term residential tenancy agreements and a separate corporate lease with this Landlord. The residential tenancy agreements were for the rental of the house, and yard, while the commercial lease pertained to the horse riding arena.

The parties were advised that the Residential Tenancy Act does not govern commercial leases. Therefore, I could not hear matters pertaining to their commercial lease for want of jurisdiction. The hearing continued to hear the matters pertaining to the residential tenancy agreement.

The initial residential tenancy agreement was for a fixed term that began on March 15, 2009 and switched to a month to month tenancy after March 31, 2010. A second fixed term tenancy agreement was entered into effective April 1, 2012 and switched to a month to month tenancy after March 31, 2013, for the monthly rent of \$1,300.00 that was due on the first of each month. Although the second tenancy agreement provided for a rent increase up to \$1,400.00 as of April 2013, that increase was never applied and rent remained at \$1,300.00 for the duration of the tenancy. On or around March 14, 2009 the Tenants paid \$1,200.00 as the security deposit.

The Tenant testified that in late October 2014, the Landlord told them they had to move out because she was going to be moving back into the house. Then on October 28, 2014 the Landlord gave them a handwritten notice to end tenancy that required them to vacate by December 31, 2014. They vacated in accordance with this notice after paying full rent so they now seek compensation equal to one month's rent.

The Tenant submitted that her husband had attended the move in inspection on March 14, 2009. The move out inspection was conducted on January 1, 2015 during which the Landlord wrote some things on a blank piece of paper instead of the condition report form. The Tenant stated that they signed the paper acknowledging that the inspection had been completed but was not agreeing to the statements.

The Tenant argued that they did not give the Landlord their written permission to keep any portion of their security deposit. They provided their forwarding address to the Landlord during the move out inspection, as written at the bottom of the copy provided in the Landlord's evidence. The Landlord has not returned their deposit so they are requesting the return of double their deposit.

The Landlord testified that at the end of October the male Tenant approached her to discuss not have any privacy there. She stated that the conversation ended with the Landlord and Tenant agreeing that the Tenants would move out by the end of December 2014. She said the male Tenant asked her to write a letter for him which she did and delivered it to the Tenant's the next day. The Landlord argued that she had no intention to move into the house as it would be too expensive. She stated that she had another residence. She asserted that the male Tenant simply came to an agreement that they would move out. She noted that all of her conversations were with the male Tenant; therefore it was questionable why he was not in attendance at this hearing.

The Landlord acknowledged that she had not returned the Tenants' security deposit and stated that she wanted time to look through the house again after they left. She confirmed that she did not have the condition report with her during the walk through with the Tenants on January 1, 2015. She asserted that she returned after they left and conducted another inspection. She said she completed the condition report form on January 4, 2015 adding things that were not pointed out during the inspection with the Tenants and mailed them a copy.

The Landlord testified that she did not have the Tenants' permission to keep any portion of the security deposit and she did not file an application for Dispute Resolution for damages or to

keep the security deposit. She argued that she could see the damages exceeded the \$1,200.00 deposit so she kept the deposit.

The Tenant argued that the Landlord and the male Tenant had many conversations and that the Landlord said to him that she intended to move back to the rental unit soon. The Tenant confirmed that she was not present during the aforementioned conversations as she was in another city studying. She submitted that they were never provided a copy of the completed condition report form until they received it in the Landlord's evidence.

In support of her position the Landlord submitted documentary evidence which included, among other things, copies of: the tenancy agreements; the October 28, 2014 letter written as notice to vacate; the handwritten move out condition report dated January 1, 2015; and the condition report form signed by the Landlord on January 4, 2015.

### Analysis

After careful consideration of the foregoing, documentary evidence, and on a balance of probabilities I find as follows:

**Section 7** of the Act provides as follows in respect to claims for monetary losses and for damages made herein:

#### **7. Liability for not complying with this Act or a tenancy agreement**

- 7(1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.
- 7(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

After careful consideration of the foregoing, documentary evidence, and on a balance of probabilities I find as follows:

**Section 7** of the Act provides as follows in respect to claims for monetary losses and for damages made herein:

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After careful consideration of the foregoing, documentary evidence, and on a balance of probabilities I find as follows:

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Section 49(3) of the Act provides that a landlord who is an individual may end a tenancy in respect of a rental unit if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit.

Section 51(1) of the Act stipulates that a tenant who receives a notice to end a tenancy under section 49 [*landlord's use of property*] is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement.

Section 52 of the Act provides that in order to be effective, a notice to end a tenancy must be in writing and must

- (a) be signed and dated by the landlord or tenant giving the notice,
- (b) give the address of the rental unit,
- (c) state the effective date of the notice,
- (d) except for a notice under section 45 (1) or (2) [*tenant's notice*], state the grounds for ending the tenancy, and

**(e) when given by a landlord, be in the approved form.**

[My emphasis added by bolding]

In this case the Tenants were not served a 2 Month Notice to end tenancy in the approved form a required by section 52(e) of the Act. Therefore, despite the Tenants vacating the rental property on December 31, 2014 as per the hand written letter dated October 28, 2014, the Tenants are not entitled monetary compensation equal to one month's rent. Accordingly, I dismiss the Tenant's claim for \$1,300.00 compensation, without leave to reapply.

Section 38(1) of the *Act* stipulates that if within 15 days after the later of: 1) the date the tenancy ends, and 2) the date the landlord receives the tenant's forwarding address in writing, the landlord must repay the security deposit, to the tenant with interest or make application for dispute resolution claiming against the security deposit.

This tenancy ended December 31, 2014, as noted above, and the Landlord received the Tenants' forwarding address on January 1, 2015. Therefore, the Landlord was required to return the Tenants' security deposit in full or file for dispute resolution no later than January 16, 2015. The Landlord did neither.

I conclude that the Landlord has failed to comply with Section 38(1) of the *Act* and that the Landlord is now subject to Section 38(6) of the *Act* which states that if a landlord fails to comply with section 38(1) the landlord may not make a claim against the security deposit and the landlord must pay the tenant double the security deposit.

Based on the above, I find that the Tenants have succeeded in proving the merits of their claim for the return of double their deposit and I award them compensation in the amount of **\$2,400.00** (2 x \$1,200.00).

Section 72(1) of the *Act* stipulates that the director may order payment or repayment of a fee under section 59 (2) (c) [*starting proceedings*] or 79 (3) (b) [*application for review of director's decision*] by one party to a dispute resolution proceeding to another party or to the director.

The Tenants have partially succeeded with their application; therefore, I award partial recovery of their filing fee in the amount of **\$25.00**, pursuant to section 72(1) of the *Act*.

### Conclusion

I declined to hear matters pertaining to the party's commercial lease for want of jurisdiction. The Tenants have partially succeed with their application and were awarded \$2,400.00 as the return of double their security deposit plus \$25.00 as partial recovery of their filing fee.

The Tenants have been issued a Monetary Order for **\$2,425.00** (\$2,400.00 + \$25.00). This Order is legally binding and must be served upon the Landlord. In the event that the Landlord does not comply with this Order it may be filed with the British Columbia Small Claims Court 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: July 22, 2015

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Residential Tenancy Branch

