



# 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 scheduled to hear the Tenants' Application for Dispute Resolution seeking return of the security deposit; compensation for damage or loss under the Act, regulation or tenancy agreement; and to recover the cost of the filing fee from the Landlords.

The parties gave affirmed testimony at the Hearing.

The Landlord NA acknowledged receipt of the Notice of Hearing documents and copies of the Tenants' documentary evidence, by registered mail, delivered September 23, 2015. She stated that they were signed for by "someone who was staying at [her] house while she [and the Landlord SA were] away. NA stated that they were out of the country from the "end of August" until November 1, 2015. She testified that she faxed approximately 29 pages of documentary evidence (including invoices, receipts, and photographs) to the Residential Tenancy Branch on November 2 and November 3, 2015. NA stated that she did not have time to serve the Tenants with copies of the Landlords' documentary evidence.

I explained to the NA that we were dealing with the Tenants' Application under Section 38 of the Act, and asked her if the Landlords had filed their own Application for damages. She replied that she had not.

Based on the evidence before me, I find that the Landlords were duly served with the Notice of Hearing and copies of the Tenants' documentary evidence on September 23, 2015, in accordance with the provisions of Section 89(c) of the Act.

### **Issue to be Decided**

Are the Tenants entitled to a monetary award pursuant to the provisions of Section 38 of the Act?

### **Background and Evidence**

A copy of the tenancy agreement was provided in evidence. This tenancy began on November 15, 2015 and ended on August 1, 2015. The Tenants paid a security deposit in the amount of \$750.00 and a pet damage deposit in the amount of \$500.00 on November 1, 2015. Monthly rent was \$1,500.00, due on the 1<sup>st</sup> day of every month.

The parties agreed on the following facts:

1. The Tenants provided the Landlords with their forwarding address in writing on August 9, 2015. The Tenants also advised the Landlords that they wanted return of the deposits in full.
2. The Landlords did not return any of the deposits to the Tenants and have not filed an Application for Dispute Resolution against the deposits.

### **Analysis**

A security deposit and a pet damage deposit are held in a form of trust by a landlord for a tenant, to be applied in accordance with the provisions of the Act. A landlord may not arbitrarily decide whether or not to keep any or all of the deposits.

The Act requires a tenant to provide a forwarding address within one year of the end of the tenancy date in order to be entitled to return of the security deposit.

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 and pet damage deposit in full, together with any accrued interest; or
2. make an application for dispute resolution claiming against the deposits.

I find that the Landlords did not file an application for dispute resolution against the deposits, or return the full amount of the deposits within 15 days of receipt of the Tenants' forwarding address in writing.

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 deposits. Therefore, I find that the Tenants are entitled to a monetary order for double the amount of the deposits in the total amount of **\$2,500.00**.

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

The Landlords retain the right to file an application for damages under Section 67 of the Act, if they so desires.

### **Conclusion**

I hereby grant the Tenants a Monetary Order in the amount of **\$2,550.00** 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: November 03, 2015

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Residential Tenancy Branch

