



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Dispute Codes:**

Landlord's application (made July 16, 2015): MND; MNDC; MNSD; SS; FF

Tenants' application (made August 2, 2015): MNSD; OLC; FF

### **Introduction**

This Hearing was convened to consider cross applications. The Landlord filed an Application for Dispute Resolution seeking a monetary award for damages; compensation for damage or loss under the Act, regulation or tenancy agreement; to apply the security deposit towards her monetary award; for an Order that she may serve documents in a different way than required by the Act; and to recover the cost of the filing fee from the Tenants.

The Tenants filed an Application for Dispute Resolution seeking return of the security deposit; for 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.

### **Preliminary Matter**

At the outset of the Hearing, the Landlord applied for an adjournment. She stated that she had attempted to amend her Application for Dispute Resolution; but she discovered that she did not do so within the time limits provided by the Act. The Landlord stated that she was late attempting to amend her Application because of a medical emergency. She also stated that she has recently hired a lawyer and submitted that she wished to adjourn so that her lawyer could be present.

The Landlord did not provide documentary evidence of a medical emergency, or explain why she only just hired a lawyer.

The Tenants objected to adjourning the matters. They stated that they had already waited "since July, 2015" for this Hearing and they wished to proceed.

I explained to the parties that we could proceed with the Tenants' Application without compromising the Landlord's Application. The Act has very specific and narrow requirements for how security deposits must be dealt with at the end of a tenancy. I explained that even if the Tenants were successful in their Application for return of the security deposit, the Landlord

would retain the right to make another Application under the provisions of Section 67 of the Act. Therefore, I find that there is no prejudice to the Landlord in proceeding with the Tenants' Application. I dismissed the Landlord's Application **with leave to reapply**.

The Tenants testified that they served the Landlord with their Notice of Hearing documents and copies of their documentary evidence by registered mail sent August 6, 2015. The Tenants provided a copy of the registered mail receipt and tracking number in evidence. I described the Tenants' documentary evidence and the Landlord acknowledged receiving the Notice of Hearing documents and evidentiary material.

It is important to note that the tenancy is ended and therefore there is no need to order the Landlord to comply with the Act, regulation or tenancy agreement.

### **Issues to be Decided**

1. Are the Tenants entitled to return of the security deposit?

### **Background and Evidence**

This tenancy began on July 1, 2014, and ended on June 30, 2015. The rental unit is a furnished house. Monthly rent was \$4,480.00, due on the 1st day of each month. The Tenants paid a security deposit and a pet damage deposit, each in the amount of \$2,240.00, for a total of \$4,480.00.

A Condition Inspection Report was completed at the beginning and the end of the tenancy. The move-out Condition Inspection Report was done on June 30, 2015. The Landlord acknowledged receiving the Tenants' forwarding address on May 24 2015, but stated that she was confused because she was given two forwarding addresses; the one provided on May 24, 2015, was a post office box and the one provided on the move-out Condition Inspection Report was a street address.

The Landlord has not returned any of the security or pet damage deposits. There is dispute over what damage, if any, is the Tenants' responsibility. The Tenants submit that the move-out Condition Inspection Report was altered by the Landlord after they signed it and that they didn't agree to any of the damages alleged by the Landlord. Both parties provided copies of a Condition Inspection Report.

### **Analysis**

A security deposit is held in a form of trust by the Landlord for the Tenants, 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 or pet damage 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.

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.

I accept that the Tenants provided their forwarding address twice, and that the mailing addresses differed. I also note that the Landlord made her Application before the Tenants' Application was made and that the Landlord provided the address given on the Condition Inspection Report dated June 30, 2015. Therefore I find that the Landlord received the Tenants' forwarding address on June 30, 2015. In this case, the Landlord did not apply against the deposits within 15 days of receipt of the Tenants' forwarding address. Therefore, I find that the Tenants are entitled to compensation under Section 38(6) of the Act.

I find that the Tenants have established a monetary award in the total amount of **\$8,960.00** (double the amount of the security deposit and pet damage deposit). **I make no finding with respect to the Landlord's claim for damages.**

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 provide the Tenants with a Monetary Order in the amount of **\$9,010.00** for service upon the Landlord. This Order may be filed in the Provincial Court of British Columbia (Small Claims Court) and enforced as an Order of that Court.

**I make no findings with respect to the Landlord's Application for Dispute Resolution, which is dismissed with leave to reapply.**

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: January 11, 2016

---

Residential Tenancy Branch

