



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDC, MNSD, FF

### Introduction

This matter dealt with an application by the Tenant for compensation for damage or loss under the Act, regulations or tenancy agreement, for the return of double the Tenant's security and pet deposits and to recover the filing fee.

The Tenant said she served the Landlords with the Application and Notice of Hearing (the "hearing package") by personal delivery by a third party on July 28, 2015. Based on the evidence of the Tenant, I find that the Landlords were served with the Tenant's hearing package as required by s. 89 of the Act and the hearing proceeded with both parties in attendance.

### Issues(s) to be Decided

1. Is the Tenant entitled to compensation for loss or damage and if so how much?
2. Is the Tenant entitled to the return all or part of the security and pet deposits?

### Background and Evidence

This tenancy was to start on July 1, 2015 as a month to month tenancy. The Tenant said she paid the security deposit of \$625.00, the pet deposit of \$75.00 and the first month's rent of \$1,250.00 on June 25, 2015. The Tenant continued to say that on June 26 she changed her mind and phoned the Landlord to cancel the tenancy and get her money back. The Tenant said she talked to the female Landlord on June 26 and the male Landlord on June 28, 2015. The Tenant said she thought the tenancy was cancelled and she would get her money back. The Landlord said that they understood the Tenant had rented the unit and when the Tenant said she was not moving in the Landlords were unable to rent the unit to someone else for July, 2015. The Landlord said they had an agreement that the Tenant was renting the unit. The Tenant said the Landlords have not given her \$1,950.00 back.

The Tenant said she wrote a letter to the Landlord's dated July 1, 2015 canceling the tenancy and then another letter dated July 7, 2015 giving the Landlord her forwarding address so the Landlord could return her security and pet deposits. The Landlord said

they did not receive these letters and they are not in the evidence package. The Tenant said she did not know why the letters were not in the Landlord's package. The Tenant also said the letters dated July 1, 2015 and July 7, 2015 were not in her package as well. The Landlord said they did not receive written notice to end the tenancy nor written notice of the Tenant's forwarding address.

The Tenant continued to say she has applied for the return of double her security and pet deposits in the amount of \$700.00 X 2 = \$1,400.00 and the return of the July, 2015 rent of \$1,250.00. The Tenant said her total application is for \$2,650.00.

The Landlord said they completed some repairs that the Tenant requested on June 25, 2015 prior to the Tenant moving in so the Landlord thought they could retain the security and pet deposits to cover these costs. The Landlord said they did not know they had to make an application to keep the deposits. As well the Landlord said they rented the unit to the Tenant so the Tenant had to pay the July, 2015 rent in the amount of \$1,250.00. The Landlord said they believed they had a contract with the Tenant and the Tenant should pay the rent.

The parties were offered an opportunity to settle the dispute between them. No settlement agreement was achieved.

### Analysis

Section 16 of the Act says the rights and obligations of a landlord and tenant under a tenancy agreement take effect from the date the tenancy agreement is entered into, whether or not the tenant ever occupies the rental unit. I find this tenancy agreement was entered into on June 25, 2015 when the Tenant paid the Landlord \$1,950.00 for the first month's rent and deposits and the Landlord issued a receipt for that payment.

Section 26 says a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

Section 45 of the Act says a Tenant may end a periodic term tenancy not earlier than the one month prior to the date rent is paid and it must be with written notice or with the agreement of the Landlord in writing.

As the letters dated July 1, 2015 and July 7, 2015 are not in either of the Landlords' or Tenant's evidence packages, I find on the balance of probabilities that the letters were most likely not given to the Landlord. Therefore the Tenant did not give the Landlords proper notice to end the tenancy and did not give the Landlord her forwarding address in writing. Consequently, the Tenant does not have the right to the return of the July, 2015 rent in the amount of \$1,250.00. I dismiss without leave to reapply the Tenant's claim for the return of the July, 2015 rent.

Further as the Tenant has not proven service of her forwarding address in writing to the Landlord; I find the Tenant is not eligible pursuant to section 38 of the Act for a doubling of the security and pet deposit. The Landlord has up to 15 days to return the deposits or make an application to retain the Tenant's security deposit of \$625.00 and pet deposit of \$75.00. I find the 15 days start as of today so the Landlord has until February 3, 2016 to return the Tenant's security and pet deposits to the mailing address of #46 – 2270 196 Street, Langley, B.C, V2Z 1N6 or to make an application to retain the deposits.

As the Tenant has not been successful in this matter, I order the Tenant to bear the cost of the filing fee of \$50.00 that she has already paid.

### Conclusion

The Landlord has 15 days or until February 3, 2015 to return the Tenant's security and pet deposit or to make an application to retain the deposits.

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 18, 2016

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Residential Tenancy Branch

