



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Dispute Codes**

For the tenants: MNSD, MNDC, FF

For the landlords: MNSD, MNDC, MND, MNR, FF

### **Introduction and Preliminary matters-**

This hearing was originally convened as a result of the cross applications of the parties for dispute resolution under the Residential Tenancy Act ("Act").

The tenants applied for a monetary order for a return of their security deposit, for money owed or compensation for damage or loss under the Act, the tenancy agreement or the regulation, and for recovery of the filing fee paid for this application.

The landlords applied for authority to keep the tenants' security deposit, for money owed or compensation for damage or loss under the Act, the tenancy agreement or the regulation, alleged damage to the rental unit, alleged unpaid utilities, and for recovery of the filing fee paid for this application.

An Interim Decision in this matter was entered on December 17, 2015, should be read in conjunction with this Decision and further, it is incorporated herein by reference.

In the Interim Decision, I determined that the hearing would be adjourned and reconvened in order to hear the landlords' application, as the tenants' application had been fully heard by me at the original hearing.

It has now become necessary to enter a final Decision on the tenants' application, with the landlords' application to be separated and dealt with at the next hearing. This necessity arises out of the circumstances whereby the undersigned will not be available for a future hearing.

As I have not heard evidence regarding the landlords' application, I am not seized of that application and another Arbitrator will determine the merits of the landlords' application separately, as each application stands alone.

For clarity, both parties are advised that they are to attend the next scheduled hearing on February 10, 2016, at 9:00 a.m., as per the notices of hearing already sent to the parties.

At the original hearing, the participants were provided the opportunity to present their evidence orally and to refer to relevant evidence submitted prior to the hearing in accordance with the Dispute Resolution Rules of Procedure ("Rules"), and make submissions to me.

I have reviewed all oral and documentary evidence before me that met the requirements of the Rules; however, I refer to only the relevant evidence regarding the facts and issues in this decision.

Words utilizing the singular shall also include the plural and vice versa where the context requires.

#### Issue(s) to be Decided

Are the tenants entitled to a return of their security deposit, that this amount should be doubled, further monetary compensation, and for recovery of the filing fee paid for this application?

#### Background and Evidence

The undisputed evidence of the parties was that this tenancy began on September 1, 2012, ended on February 28, 2015, monthly rent was \$1975.00, and the tenants paid a security deposit of \$987.50, which is being retained by the landlords.

The tenants' monetary claim is as follows:

Overpayment of hydro	\$1201.73
Overpayment of gas	\$170.97
Overpayment of city water	\$413.66
Overpayment of cable/internet	\$605.34
Security deposit, doubled	\$1975.00
Filing fee	\$50.00

In support of their claim for overpayment of utilities, the tenants submitted that although they lived on the upper two floors of the residential property, there were two separate rental units rented by the landlords, and that the utilities were not shared according to the addendum to the written tenancy agreement. In particular, the addendum states that the utilities were based upon the number of occupants, and as the tenants had three people living in their rental unit, and there were 3 adults and 2 children living in the lower units, they overpaid in the utility bills.

The tenants further explained that the landlords required the tenants to put the hydro and gas bills in their name, pay the full bill up front, and then the landlords would reimburse them 1/3 of the bill. The other utility bills would be sent directly to the landlord, at which point he would divide the bill.

The tenants submitted that the issue first arose when they, the tenants, did not receive copies of the bills from the landlords, and at one time, in August 2013, the landlord expected them to pay the full water bill due to a higher than normal bill.

The tenants submitted further that the landlords violated their own addendum as their proportion of utility bills exceeded the number of occupants in their rental unit.

As to the issue of their security deposit, the tenants submitted that they provided the landlords with their written forwarding address on February 28, 2015, in a letter left on the kitchen island.

The tenants submitted that there was a move-in inspection of the rental unit at the beginning of the tenancy, but there was not a move-out inspection.

The tenants' relevant evidence included, but was not limited to, copies of the utilities bills, a written summary of their case, a written tenancy agreement, the addendum to the tenancy agreement, a copy of a condition inspection report, and photographs of the rental unit.

#### *Landlords' response*

The landlords submitted that the agreement from the start of the tenancy was that the tenants would pay 2/3 of the utilities, and the landlords would pay 1/3, including paying for the gas bill, which the other tenants do not use.

The landlords submitted that there was no breakdown of the requests from the tenants.

As to the issue of the tenants' security deposit, the landlords confirmed receiving the tenants' written forwarding address on February 28, 2015, and that the security deposit has not been returned.

The landlords' evidence included highlighted portions of the addendum to the written tenancy agreement, showing unpaid rent or household bills would be offset by the tenants' security deposit and that cleaning required would be deducted from the tenants' security deposit.

The landlords' additional evidence relevant to a response to the tenants' application was copies of communication between the parties.

### Analysis

Under section 7(1) of the Act, if a landlord or tenant does not comply with the Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other party for damage or loss that results. Section 7(2) also requires that the claiming party do whatever is reasonable to minimize their loss. Under section 67 of the Act, an arbitrator may determine the amount of the damage or loss resulting from that party not complying with the Act, the regulations or a tenancy agreement, and order that party to pay compensation to the other party. The claiming party, the tenants in this case, has the burden of proof to substantiate their claim on a balance of probabilities.

### *Utility bills reimbursement*

I find the tenants have not submitted sufficient evidence to show that they have taken reasonable steps to minimize any loss due to their failure to address or bring forth these issues with the landlord as and when they may have occurred. For instance, the tenants speak of the issue with overpayment of utilities first arising from the beginning of the tenancy in September 2012 and into 2013.

I find a landlord must be afforded an opportunity to address issues with the tenants within a reasonable time and during the tenancy, not at the end of a tenancy.

As such, I find the tenants have not complied with section 7(2) of the Act, and I therefore dismiss their claim for reimbursement of alleged overpayment of utilities.

*Tenants' security deposit*

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

In the case before me, the undisputed evidence was that the tenancy ended on February 28, 2015, and the tenants provided in letter form their written forwarding address on that date. Therefore the landlords had until March 15, 2015 to return the tenants' security deposit or file their application claiming against the security deposit. Instead the landlords' application was not filed until November 16, 2015.

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 tenants double the amount of their security deposit.

Section 20(e) of the Act states that a landlord must not require, or include as a term of a tenancy agreement, that the landlord automatically keeps all or part of the security deposit or the pet damage deposit at the end of the tenancy agreement.

I therefore approve the tenants' claim for a return of their security deposit and that this amount must be doubled.

I also approve the tenants' claim for reimbursement of their filing fee of \$50.00, pursuant to section 72(1) of the Act.

Due to the above, I find the tenants are entitled to a total monetary award of \$2025.00, comprised of their security deposit of \$987.50, doubled to \$1975.00 and for recovery of their filing fee.

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 \$2025.00, which is enclosed with the tenants' Decision.

Should the landlords fail to pay the tenants this amount without delay after being served the order, the monetary order may be filed in the Provincial Court of British Columbia (Small Claims) for enforcement as an Order of that Court. The landlords are advised that costs of such enforcement are recoverable from the landlords.

Conclusion

The portion of the tenants' application seeking monetary compensation for overpayments of utilities was dismissed. The portion of the tenants' application requesting a return of their security deposit, which was doubled by operation of the Act, is granted.

The tenants have been awarded a monetary order.

The landlords' application was separated from the tenants' application, due to the reasons provided above, and is set to be heard separately by another Arbitrator.

I further direct that the next Arbitrator be given possession of the tenants' application and evidence, as the evidence contained in the file is responsive to the landlords' application.

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 19, 2016

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Residential Tenancy Branch

