



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

### Dispute Codes

MNSD FF

### Introduction

This hearing was convened as a result of the Tenants' Application for Dispute Resolution, submitted to the Residential Tenancy Branch on April 27, 2016 (the "Application").

The Tenants applied for the following relief pursuant to the *Residential Tenancy Act* (the "Act"): a monetary order for the return of a security deposit or pet damage deposit; and a monetary order for recovery of the filing fee.

Both of the Tenants attended the hearing. The Landlords were represented at the hearing by J.D. All parties giving evidence provided a solemn affirmation.

The Tenants testified that the Notice of a Dispute Resolution Hearing dated April 29, 2016, was served on the Landlords in person. All parties were in attendance and were prepared to proceed.

In addition, the Tenants testified that the documentary evidence that was submitted to the Residential Tenancy Branch by fax on August 30, 2016, was sent to the Landlord by ordinary mail on or about August 2, 2016. Although J.D. was not certain of the date the evidence was received, he did not express any objection to the evidence being considered.

Pursuant to sections 88 and 90 of the *Act*, documents served by ordinary mail are deemed to have been received five days later. Accordingly, I find the Tenants' documentary evidence is deemed to have been received by the Landlord on August 7, 2016, in accordance with Residential Tenancy Branch Rule of Procedure 3.14.

Both parties were given the opportunity to present evidence orally and in written and documentary form, and to make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Issues to be Decided

1. Are the Tenants entitled to a monetary order for return of all or part of the security deposit?
2. Are the Tenants entitled to a monetary order for recovery of the filing fee?

### Background and Evidence

Excerpts of the written tenancy agreement between the parties were submitted with the Tenants' documentary evidence. The parties provided oral testimony concerning the remaining salient details.

The fixed-term tenancy began on January 1, 2016, and was to continue for six months. Rent in the amount of \$1,200.00 per month was due on the first day of each month. The Tenants paid a security deposit of \$600.00 at the beginning of the tenancy.

On behalf of the Tenants, M.W. provided oral testimony regarding the tenancy. He confirmed the terms above. In addition, he confirmed the Tenants met the family and understood children lived in the Landlords' home.

M.W. provided oral testimony about the suitability of the tenancy. He stated that A.Z. works shift work and found it difficult to rest during the day when needed. The primary reason A.Z. could not rest was due to noise from the Landlord's home and yard.

According to the Tenants, the parties were unable to find a solution. On March 15, 2016, they provided the Landlords with written notice of their intention to end the fixed-term tenancy. The Tenants vacated the rental unit on March 31, 2016. On that date, the Tenants also provided their forwarding address in writing, asking the Landlords to return the security deposit and remaining post-dated cheques.

The Tenants' evidence, supported by letters from friends and family, is that the rental unit was cleaned thoroughly when the Tenants vacated.

On behalf of the Landlord, J.D. testified that the Tenants complained about noise continuously after moving in. He referred to complaints about noise from the family dog,

raccoons, children, and vacuuming, and walking on the floor. J.D. also says M.W. tried to intimidate the Landlords.

J.D. acknowledged the security deposit has been retained. The reasons given for keeping the security deposit relate to the Tenants' numerous complaints, an alleged fire in the rental unit, and the condition of the rental unit.

### Analysis

Based on the documentary evidence and oral testimony provided during the hearing, and on a balance of probabilities, I find the following:

Section 38(1) of the *Act* requires a landlord to repay the security deposit or make an application for dispute resolution within 15 days after the latter of the date the tenancy ends or the date the landlord receives the tenant's forwarding address in writing.

Further, section 38(6) of the *Act* stipulates that, if a landlord does not comply with section 38(1), the landlord may not make a claim against the security deposit, and must pay the tenant double the amount of the security deposit.

In this case, the Tenants' undisputed testimony is that their forwarding address was provided to the Landlords, in writing, on March 31, 2016. Accordingly, I find that the Landlords had until April 15, 2016, to return the security deposit to the Tenants or file an application for dispute resolution. The Landlords did neither.

Pursuant to section 38(1) and (6) of the *Act*, and without limiting any rights of the Landlords to seek compensation for losses flowing from the alleged breach of the fixed-term tenancy agreement, I find the Tenants are entitled to a monetary order in the amount of \$1,200.00, which is double the amount of the security deposit.

Having been successful, I also find the Tenants are entitled to recover the \$100.00 filing fee paid to bring the Application.

Conclusion

The Tenants are granted a monetary order in the amount of \$1,300.00. This order may be filed in and enforced as an order of the Provincial Court of British Columbia (Small Claims).

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: September 06, 2016

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Residential Tenancy Branch