



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### Dispute Codes

For the tenant: MNSD OLC FF  
For the landlords: MND MNSD MNDC FF

### Introduction

This hearing was convened as a result of the cross-applications of the parties for dispute resolution (the “Applications”) under the *Residential Tenancy Act* (the “Act”). The tenant applied for a monetary order for the return of double her security deposit and pet damage deposit, for an order directing the landlords to comply with the Act, regulation or tenancy agreement, and to recover the cost of the filing fee. The landlords applied for a monetary order for damage to the unit, site or property, to retain all or part of the security deposit and pet damage deposit, for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, and to recover the cost of the filing fee.

Landlord J.C. (the “landlord”) and the tenant attended the teleconference hearing as scheduled. The hearing process was explained to the parties and an opportunity was given to ask questions about the hearing process. Thereafter the parties gave affirmed testimony, were provided the opportunity to present their evidence orally and in documentary form prior to the hearing, and make submissions to me. I have reviewed all 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.

Although both parties confirmed having received the documentary evidence from the other party, the tenant raised concerns with having received the landlords’ evidence late, which was confirmed as having been served late and contrary to the Rules of Procedure.

### Preliminary and Procedural Matter

The landlord was advised that their entire Application was being refused, pursuant to section 59(5)(c) of the *Residential Tenancy Act (Act)*, as their application for dispute resolution did not provide sufficient particulars as is required by section 59(2)(b) of the *Act*. The landlords are at liberty to re-apply as a result, but are reminded to include full particulars of their claim when submitting their Application in the “Details of Dispute” section of the Application. Furthermore, when seeking monetary compensation, the applicants are encouraged to use the “Monetary Order Worksheet” (Form RTB-37) available on the Residential Tenancy Branch website at [www.rto.gov.bc.ca](http://www.rto.gov.bc.ca), under “Forms”. The amount listed on the monetary worksheet being claimed should also match the monetary amount being claimed on the Application.

Given the above, I do not grant the recovery of the landlords’ filing fee.

The hearing continued with consideration of the tenant’s Application only.

### Issues to be Decided

- What should happen to the tenant’s security deposit and pet damage deposit under the *Act*?
- If the landlords breached section 38 of the *Act*, should the landlords be directed to comply with the *Act*?

### Background and Evidence

A copy of the tenancy agreement was submitted in evidence. A month to month tenancy began on November 15, 2015 and ended as of June 1, 2016. Monthly rent in the amount of \$900.00 was due on the first day of each month. A security deposit of \$450.00 and pet damage deposit of \$450.00 was paid by the tenant at the start of the tenancy, which the landlords continue to hold. The tenant is seeking the return of double their security deposit and pet damage deposit in the amount of \$1,800.00.

The parties agreed that the tenant vacated the rental unit as of June 1, 2016. The parties also agreed that the tenant mailed her written forwarding address on June 20, 2016 by registered mail and which was signed for and accepted by the landlords on June 24, 2016. A copy of the registered mail tracking number supports this information and the registered mail tracking number has been included on the cover page of this Decision for ease of reference. The landlords applied for dispute resolution claiming towards the tenant’s security deposit and pet damage deposit on July 8, 2016.

### Analysis

Based on the documentary evidence, testimony, and on the balance of probabilities, I find the following.

#### Test for damages or loss

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in sections 7 and 67 of the *Act*. Accordingly, an applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did what was reasonable under the *Act* to minimize the damage or loss.

**Tenant's claim for double their security deposit and pet damage deposit** – Section 38 of the *Act*, requires that a landlord must return or make a claim against the security deposit and pet damage deposit within 15 days of the latter of the end of tenancy date and the date the written forwarding address is provided by the tenant to the landlord. The tenancy ended on June 1, 2016. According to the online registered mail tracking website information, the landlord received the tenant's written forwarding address on June 24, 2016, when the landlord signed for and accepted the registered mail package from the tenant. The landlords filed their application on July 8, 2016, claiming towards the tenant's security deposit and pet damage deposit in accordance with section 38 of the *Act* within the 15 day deadline of June 24, 2016, the latter of the two dates described above.

Based on the above, I find the landlords complied with section 38 of the *Act* by filing a claim within 15 days of the date they received the tenant's written forwarding address. As a result, I find the tenant is not entitled to the return of double her original security deposit and pet damage deposit under the *Act*. Therefore, the tenant's application for double her deposits is **dismissed, without leave to reapply**.

As the tenant's claim did not have merit, **I do not grant** the tenant the recovery of the cost of the filing fee in the amount of **\$100.00**.

The landlords continue to hold the tenant's security deposit of \$450.00 and pet damage deposit of \$450.00, which have accrued no interest since the start of the tenancy. As the landlords' Application was refused pursuant to section 59 of the *Act*, **I ORDER** the landlords to return the tenant's \$450.00 original security deposit and \$450.00 original pet damage deposit, for a total of the combined deposits in the amount of **\$900.00 by November 16, 2016 by 5:00 p.m.** The tenant is granted a monetary order pursuant to section 67 of the *Act* in the amount of \$900.00.

### Conclusion

The landlords' application has been refused pursuant to section 59 of the *Act*. The landlords are at liberty to reapply. I note that this Decision does not extend any applicable timelines under the *Act*.

The landlords have been ordered to return the tenant's \$450.00 original security deposit and \$450.00 original pet damage deposit, for a total of the combined deposits in the amount of \$900.00 by November 16, 2016 by 5:00 p.m. The tenant has been granted a monetary order pursuant to section 67 of the *Act* in the amount of \$900.00. Should the tenant be required to enforce the monetary order, the monetary order must be served on the landlord and may be filed in the Provincial Court of British Columbia (Small Claims) and enforced as an order of that court.

This decision is final and binding on the parties, unless otherwise provided under the *Act*, and 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 14, 2016

---

Residential Tenancy Branch