



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes:

**MND, MNR, OPB, MNSD, FF**

Introduction

This was a cross-application hearing.

This hearing was scheduled in response to the landlord's Application for Dispute Resolution made on July 16, 2016, in which the landlord has requested compensation for damage to the rental unit, unpaid rent and an order of possession for breach of a material term of the tenancy.

The tenants' applied on July 21, 2016 requesting return of the security deposit and to recover the filing fee from the landlord for the cost of this Application for Dispute Resolution.

Both parties were present at the hearing and affirmed. At the start of the hearing I introduced myself and the participants. The hearing process was explained. The parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the evidence and testimony provided.

Preliminary Matters

The parties confirmed receipt of the hearing documents within the required time limit.

The tenant sent 15 pages of evidence to the landlord on December 31, 2016; via registered mail. The landlord said that mail has not yet been delivered. A review of that evidence indicated that the tenant had made submissions that were not relevant to either application.

The landlord submitted three pages of evidence to the Residential Tenancy Branch on January 20, 2017. The tenant said that evidence was received last week. This evidence set out the details of the landlords' monetary claim. The tenants said they understood the claim that the landlord has made.

The landlord does not require an order of possession. The tenants vacated in accordance with the tenancy agreement.

Issue(s) to be Decided

Is the landlord entitled to compensation for damage to the rental unit?

Is the landlord entitled to compensation for three days of over holding by the tenants?

Are the tenants entitled to return of the security deposit?

Background and Evidence

The tenancy commenced on July 1, 2013 for a fixed term ending June 30 or July 1, 2016. The end date of the tenancy was in dispute. Neither party supplied a copy of the tenancy agreement. The parties agreed that at the end of the term the tenants were to vacate. The tenants paid a security deposit in the sum of \$1,050.00.

Condition inspection reports were not completed in accordance with the Act. Reports were not signed and given to the tenants.

The landlord has made the following claim:

3 days over holding	215.00
Blind	180.00
Fireplace repair	365.00
<b>TOTAL</b>	<b>\$760.00</b>

During the hearing the landlord reduced the claim for the blinds to \$123.00 and the fireplace to \$177.50. The total claim was then:

3 days over holding	215.00
Blind	123.00
Fireplace repair	177.50
<b>TOTAL</b>	<b>\$515.50</b>

The tenant supplied copies of emails sent between the parties. From the evidence before me it appears that the parties agreed to renew a lease effective July 1, 2015. The landlord sent the tenants an email on April 17, 2015, agreeing to rent of \$2,200.00.

On May 13, 2016 the landlord emailed the tenants to tell them the home had been sold and they could stay until July 31, 2016. The tenants were offered compensation in the sum of \$1,050.00; one half of one months' rent.

On June 19, 2016 the tenants responded that they would vacate July 1, 2016. A cleaner would arrive July 2, 2016. The landlord had requested the tenants hire professional cleaners and the tenants complied. The tenant paid the agreed rent for June 2016.

On June 20, 2016 the landlord responded thanking the tenants and wrote that the deposit would be refunded after a suggested inspection on July 2, 2016. The tenants replied that the carpet cleaner would arrive on July 2 and offered to meet on July 3, 2016 at 7 p.m. The landlord agreed.

The landlord was given the keys to the rental unit on July 3, 2016. The tenants supplied a moving van invoice as proof the tenants vacated the unit July 1, 2016. The tenants said the fixed term ended July 1, 2016; the landlord said the term ended June 30, 2016.

The landlord has claimed unpaid rent for the three days the landlord believes the tenants over-held in the rental unit. The landlord said that because the carpets were still damp on July 3, 2016 this proved the tenants had been living in the unit until that date.

The landlord claimed compensation for repair of blinds that were 11 years old at the end of the tenancy. During the hearing the landlord was told that the useful life of blinds in a rental unit is 10 years. As the blinds were more than 10 years old the landlord was informed that the claim for repair would be dismissed.

The landlord claimed the cost of a fireplace inspection. The landlord said the fireplace was working at the start of the tenancy and was not functioning at the end of the tenancy. The fireplace was not serviced during the tenancy. The landlord submitted an invoice for fireplace servicing on August 2, 2016.

The tenants said that the fireplace was not inspected at the start of the tenancy. The tenants have young children and were afraid they could be burned, so never lit the fireplace. The forced air heat in the home worked well and there was no need to use the gas fireplace.

The landlord confirmed receipt of the tenants' forwarding address on July 3, 2016. The landlord confirmed receipt of a letter dated July 5, 2016 that again provided the address. The landlord made an application on July 16, 2016 but failed to include a claim against the security deposit.

### Analysis

In the absence of a copy of a written tenancy agreement I have relied on emails sent between the parties that indicated the tenancy ended effective June 30, 2015, with the final tenancy following, effective July 1, 2015. The tenants agreed to another one year term.

From the evidence before me I find, pursuant to section 44(f) that the tenancy ended on July 1, 2016, the date the tenants vacated the rental unit.

In relation to the claim for unpaid rent for July 1 to 3, 2016 I find that the parties agreed the tenants would vacate on July 1, 2016. This was set out in the tenants email sent June 19, 2016. The tenants vacated the rental unit effective July 1, 2016 and, as a result the landlord is entitled to compensation for one day in the sum of \$72.33. The tenants had the unit cleaned professionally on July 2, 2016. The carpet cleaning occurred on July 3, 2016. The tenants were not living in the unit or occupying the unit beyond July 1, 2016. The landlord had not obtained the keys as agreement had been reached to meet on July 3, 2016 to inspect the unit. This does not equate to the tenants having continued to occupy the unit.

The landlord was informed that the claim for blinds is dismissed. Residential Tenancy Branch policy suggests blinds have a useful life of 10 years. As the blinds were 11 years old at the time the tenancy ended any repair is to be expected as the result of normal wear and tear over the years.

There was no evidence before me that the tenants had caused the fireplace to malfunction. The fireplace was not inspected at the start of the tenancy. As with a furnace, a landlord would be responsible for servicing a gas fireplace in accordance with the manufactures' recommendation. I find that the landlord has assumed the tenants did something to the fireplace to cause it to malfunction. The invoice supplied indicates that only an inspection was completed. Therefore, I find the claim for fireplace repair is dismissed.

Sec 38(1) of the Act provides:

**38** (1) *Except as provided in subsection (3) or (4) (a), within 15 days after the later of*

*(a) the date the tenancy ends, and*

*(b) the date the landlord receives the tenant's forwarding address in writing,*

*the landlord must do one of the following:*

*(c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;*

*(d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.*

I find that the landlord received the tenants' written forwarding address on July 3, 2016; the date confirmed by the landlord. Examination and review of the landlords' application at the start of the hearing confirmed that the landlord had not submitted a claim against the deposit. The landlord did make the application within 15 days of July 3, 2016; but in the absence of an application specifically claiming against the security deposit I find that the landlord has failed to comply with section 38(1) of the Act.

The landlord may have intended to include a claim against the security deposit, but did not. Therefore, I find that the landlord was required to return the security deposit to the tenants within 15 days of July 3, 2016.

Section 38(6) of the Act sets out the consequences when a deposit is not returned as required:

*(6) If a landlord does not comply with subsection (1), the landlord*

*(a) may not make a claim against the security deposit or any pet damage deposit, and*

*(b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.*

Therefore, I find pursuant to section 38(6) of the Act that the landlord is holding a security deposit in the sum of \$2,100.00.

Pursuant to section 72 of the Act I find that the landlord may retain \$72.33 from the security deposit, in satisfaction of the claim.

The landlord has paid a filing fee, but did not request recovery of that fee. However, the landlords' application has some merit and I would find the filing fee should be recovered from the tenants. As the tenants' application has merit I find that the fees paid are set off against the other.

Based on these determinations I grant the tenants a monetary order for the balance of the security deposit in the sum of \$2,027.67. In the event that the landlord does not comply with this order, it may be served on the landlord, filed with the Province of British Columbia Small Claims Court and enforced as an order of that Court.

### Conclusion

The landlord is entitled to compensation for one day over holding.

The balance of the landlords' claim is dismissed.

The tenants are entitled to return of double the security deposit less the sum owed to the landlord.

Filing fees are set off against the other.

This decision is final and binding 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: January 27, 2017

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Residential Tenancy Branch