



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### Dispute Codes:

MNDC, MNR, MND, MNSD, OLC, RPP

### Introduction:

This hearing was convened in response to cross applications.

The male Tenant filed an Application for Dispute Resolution, in which he applied for the return of the security deposit, an Order requiring the Landlord to comply with the *Residential Tenancy Act (Act)* or the tenancy agreement, and an Order requiring the Landlord to return personal property.

The male Tenant stated that on March 05, 2017 his Application for Dispute Resolution and the Notice of Hearing were mailed to the Landlord, via regular mail. He stated they were also emailed to the Landlord on that date.

When a tenant files an Application for Dispute Resolution in which the tenant applies for a monetary Order, the tenant has the burden of proving that the landlord was served with the Application for Dispute Resolution in compliance with section 89(1) of the *Act*.

Section 89(1) of the *Act* stipulates, in part, that a tenant must serve a landlord with an Application for Dispute Resolution in one of the following ways:

by leaving a copy with the person;  
by leaving a copy with an agent for the landlord;  
by sending a copy by registered mail to the address at which the person resides or conducts business as a landlord; or  
as ordered by the director under section 71 (1) [*director's orders: delivery and service of documents*].

The Tenants submitted no evidence to show that the Application for Dispute Resolution was personally served to the Landlord or an Agent for the Landlord and I cannot, therefore, conclude that she was served in accordance with sections 89(1)(a) or 89(1)(b) of the *Act*.

The Tenants submitted no evidence to show that the Application for Dispute Resolution was served to the Landlord by registered mail and I cannot, therefore, conclude that she was served in accordance with section 89(1)(c) of the *Act*.

There is no evidence that the director authorized the Tenant to serve the Application for Dispute Resolution to the Landlord in an alternate manner and I cannot, therefore, conclude that she was served in accordance with sections 89(1)(e) of the *Act*.

The Tenants submitted no evidence to show that the Landlord received the Application for Dispute Resolution and I therefore cannot conclude that the Application has been sufficiently served pursuant to sections 71(2)(b) or 71(2)(c) of the *Act*.

As the male Tenant has failed to establish that his Application for Dispute Resolution was served to the Landlord in accordance with the *Act*, I am unable to proceed with his Application. The Tenant's Application for Dispute Resolution is dismissed, with leave to reapply.

The Landlord filed an Application for Dispute Resolution, in which the Landlord applied for a monetary Order for money owed or compensation for damage or loss, for a monetary Order for unpaid rent, for a monetary Order for damage to the rental unit, and to keep all or part of the security deposit.

The male Tenant stated that the Tenants received the Landlord's Application for Dispute Resolution and 8 pages of evidence in the mail; although he cannot recall the date they were received. As the Tenants acknowledged receipt of these documents, I am satisfied they have been sufficiently served to the Tenants pursuant to section 71(2)(b) of the *Act*.

Rule 10.1 of the Residential Tenancy Branch Rules of Procedure authorizes me to conduct the dispute resolution proceeding in the absence of a party. As the Landlord's Application for Dispute Resolution has been sufficiently served to the Tenants, I am satisfied that the Landlord's Application for Dispute Resolution can be considered in the absence of the Landlord.

#### Issue(s) to be Decided

Is the Landlord entitled to compensation for damage to the rental unit and/or to compensation for unpaid rent?

Should the security deposit be retained by the Landlord or returned to the Tenants?

#### Background and Evidence

The male Tenant stated that the tenancy began on October 28, 2016 and that they paid a security deposit of \$700.00.

The male Tenant stated that the tenancy ended on January 29, 2017.

The male Tenant stated that the Tenants provided a forwarding address, in writing, on January 29, 2017.

#### Analysis

The Landlord did not attend the hearing to provide evidence in support of her claim. I therefore find that she has failed to establish a monetary claim. As the Landlord has failed to establish a monetary claim, I find that she has failed to establish that she has the right to retain the Tenants' security deposit.

As the Landlord has failed to establish that she has the right to retain the Tenants' security deposit, I find that the security deposit of \$700.00 must be returned to the Tenants.

#### Conclusion

The Landlord's Application for Dispute resolution is dismissed, without leave to reapply.  
The Tenant's Application for Dispute resolution is dismissed, with leave to reapply.

I grant the Tenants a monetary Order for \$700.00, which represents the return of their security deposit. In the event the Landlord does not voluntarily 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.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Act*.

Dated: July 25, 2017

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Residential Tenancy Branch