



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNSD

### Introduction

This hearing was convened as a result of the Tenants' Application for Dispute Resolution, dated April 2, 2017, as amended by an Amendment to an Application for Dispute Resolution, received at the Residential Tenancy Branch on June 1, 2017 (the "Application"). The Tenants applied for an order that the Landlord return all or part of the security deposit or pet damage deposit, pursuant to the *Residential Tenancy Act* (the "Act").

All parties named in the Application attended the hearing and each provided a solemn affirmation.

Although neither party could confirm the exact date of service or receipt of the Application package, the Tenants confirmed it was served on the Landlord via registered mail. The Landlord acknowledged receipt in April 2017, more than four months before the hearing. In addition, an Amendment to an Application for Dispute Resolution was received at the Residential Tenancy Branch on June 1, 2017 (the "Amendment"). The Tenants testified it was also served on the Landlord by registered mail. However, the Landlord denied receiving the Amendment. During the hearing, it was explained to the Landlord that the amendment merely calculated double the amount of the security deposit and that the Landlord was not prejudiced by not having received it. The burden is on the Tenants to prove an entitlement to the return of the security deposit, which may be doubled by operation of section 38 of the *Act*. The hearing proceeded. I find the Landlord was sufficiently served with the Tenants' Application package for the purposes of the *Act*, pursuant to section 71 of the *Act*.

The parties were given an 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.

Issue to be Decided

Are the Tenants entitled to an order that the Landlord return all or part of the security deposit or pet damage deposit?

Background and Evidence

The parties agreed the tenancy agreement submitted by the Tenants accurately reflects the terms of the tenancy between them. It confirmed the tenancy began on August 1, 2015, and ended when the Tenants vacated the rental unit on July 31, 2016. During the tenancy, rent in the amount of \$1,550.00 per month was due on the first day of each month. Further, the Tenants acknowledged an obligation to pay a \$200.00 move-out fee required by the strata. The Tenants paid a security deposit of \$775.00, which the Landlord holds.

The Tenants testified they provided the Landlord with their forwarding address in writing in a letter dated August 5, 2016. The letter acknowledged an obligation to pay a \$200.00 move-out fee and proposed that it be retained from the security deposit. The letter stated, in part:

*This letter serves as a written request for the return of our security deposit in the amount of \$575. This is the original damage deposit minus the \$200 move in/move out fee requested by the strata.*

[Reproduced as written.]

According to the Tenants, the letter was initially sent to the Landlord via email but was subsequently sent to the Landlord by registered mail on October 7, 2017. The Landlord acknowledged receipt on October 17, 2016. A copy of the letter was submitted with the Tenants' documentary evidence.

In reply, the Landlords testified the Tenants had agreed to pay for some expenses, but did not make an application or provide documentary evidence in support.

Analysis

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

Section 38 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. When a landlord fails to do one of these two things, section 38(6) of the *Act* confirms the tenant is entitled to the return of double the security deposit.

In this case, the Landlord acknowledged receipt of the Tenants' forwarding address in writing on October 17, 2016. Accordingly, the Landlord had until November 1, 2016, to return the security deposit or make a claim against it by filing an application for dispute resolution. She did neither. Accordingly, pursuant to section 38(6) of the *Act*, I find the Tenants are entitled to receive an award of \$1,150.00, which is double the amount of the security deposit remaining after deduction of the \$200.00 move in/move out fee, which was acknowledged by the Tenants to be due under the terms of the tenancy agreement. Having been successful, I also grant the Tenants a monetary award in the amount of \$100.00 as recovery of the filing fee paid to make the Application.

Pursuant to section 67 of the *Act*, I grant the Tenants a monetary order in the amount of \$1,250.00, which is comprised of \$1,150.00 for return of double the security deposit and \$100.00 in recovery of the filing fee.

#### Conclusion

I grant the Tenant a monetary order in the amount of \$1,250.00. The 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 1, 2017

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Residential Tenancy Branch