



# 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, received at the Residential Tenancy Branch on July 10, 2017 (the "Application"). The Tenants applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- an order that the Landlords return all or part of the security deposit or pet damage deposit; and
- an order granting recovery of the filing fee.

During the hearing, the Tenants confirmed they were not seeking compensation under section 51 of the *Act*.

The Tenants attended the hearing in person and provided affirmed testimony. The Landlords did not attend the hearing.

According to the Tenants, the Application package was served on the Landlords by registered mail on July 11, 2017. They testified the Application package was not collected by the Landlords. However, pursuant to sections 89 and 90 of the *Act*, documents served by registered mail are deemed to be received five days later. Accordingly, based on the undisputed testimony of the Tenants, I find the Landlords are deemed to have received the Application package on July 16, 2017.

The Tenants 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.

#### Issues to be Decided

1. Are the Tenants entitled to an order that the Landlords return all or part of the security deposit or pet damage deposit?
2. Are the Tenants entitled to an order granting recovery of the filing fee?

#### Background and Evidence

The Tenants submitted a copy of the tenancy agreement into evidence. It confirmed the tenancy began on March 15, 2013. Initially, rent was due in the amount of \$1,600.00 per month. The Tenants paid a security deposit of \$800.00.

The Tenants testified they provided the Landlords with their forwarding address in writing on June 19, 2017. A copy of the hand-written note which included the forwarding address was submitted into evidence. However, the Landlords did not return the full amount of the security deposit to the Tenants. Rather, they provided the Tenants with a cheque, dated June 29, 2017, in the amount of \$650.00. A copy of the cheque was submitted with the Tenants' documentary evidence. Further, a hand write note submitted by the Tenants suggested that a \$150.00 deduction was on account of a "fee for yardwork – grass cutting and trimming...outdoor clean-up". According to the Tenants, \$150.00 remains outstanding.

The Landlords did not attend the hearing to dispute the Tenants' evidence.

### Analysis

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

Section 38(1) of the *Act* requires a landlord to repay deposits or make an application to keep the deposits by making an application for dispute resolution within 15 days after receipt of a tenant's forwarding address in writing or the end of the tenancy, whichever is later. 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 amount of the deposits.

In this case, the Tenants confirmed, and I find, that the Landlords received the Tenants' forwarding address in writing on June 19, 2017. Accordingly, the Landlords had until July 4, 2017, to return the security deposit to the Tenants in full, or make a claim against it by filing an application for dispute resolution. They did neither. Instead, the Landlords deducted \$150.00 from the security deposit and returned only \$650.00 to the Tenants. Accordingly, pursuant to section 38 of the *Act*, I find the Tenants are entitled to recover double the amount of the security deposit.

Policy Guideline #17(C)(5) provides assistance when determining a tenant's right to the return of the security deposit when part of it has already been returned to the tenant. It states:

*Example A: A tenant paid \$400 as a security deposit. At the end of the tenancy, the landlord held back \$125 without the tenant's written permission and without an order from the Residential Tenancy Branch. The tenant applied for an order and a hearing was held.*

*The arbitrator doubles the amount paid as a security deposit ( $\$400 \times 2 = \$800$ ), then deducts the amount already returned to the tenant, to determine the amount of the monetary order. In this example, the amount of the monetary order is \$525.00 ( $\$800 - \$275 = \$525$ ).*

[Reproduced as written.]

Following this example, I find the Tenants are entitled to a monetary award of \$950.00, which has been calculated as follows:

$$(\$800.00 \times 2) - \$650.00 = \$950.00$$

In addition, having been successful, I find the Tenants are entitled to recover the \$100.00 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 \$1,050.00, which is comprised of \$950.00 for double the security deposit (less the amount already paid) and \$100.00 in recovery of the filing fee.

### Conclusion

I grant the Tenants a monetary order in the amount of \$1,050.00. 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: January 2, 2018

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Residential Tenancy Branch