



# Dispute Resolution Services

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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 July 21, 2017, as amended by an Amendment to an Application for Dispute Resolution (the "Amendment"), received at the Residential Tenancy Branch on November 14, 2017 (together, the "Application"). The Tenants applied for an order granting return of all or part of the security deposit or pet damage deposit, pursuant to the *Residential Tenancy Act* (the "Act").

The Tenants were represented at the hearing by M.B. The Landlord attended the hearing on her own behalf. Both in attendance provided a solemn affirmation at the beginning of the hearing.

According to M.B., the Application was served on the Landlord by registered mail. The Landlord acknowledged receipt on August 4, 2017. In addition, M.B. testified that the Amendment and further documentary evidence, received at the Residential Tenancy Branch on November 14, 2017, was also served on the Landlord by registered mail. The Landlord acknowledged receipt.

In addition, the Landlord submitted two packages of documentary evidence in response to the Application. They were received at the Residential Tenancy Branch on January 11, 2017, and January 25, 2018, respectively. On behalf of the Tenants, M.B. acknowledged receipt of both packages.

Neither party raised any issue with respect to service or receipt of the above documents during the hearing. Accordingly, pursuant to section 71 of the *Act*, I find the documents were sufficiently served for the purposes 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 and to which I was referred. 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 granting return of all or part of the security deposit or pet damage deposit?

### Background and Evidence

The parties agreed the fixed-term tenancy began on July 1, 2016, and ended when the Tenants vacated the rental unit on July 1, 2017. During the tenancy, rent was due in the amount of \$1,595.00 per month. The Tenants paid a security deposit in the amount of \$797.50 and a fob/storage key deposit of \$112.00. The Landlord holds both deposits.

On behalf of the Tenants, M.B. testified she provided the Landlord with her forwarding address in writing at the same time the keys were returned, on July 1, 2017. The Tenant did not submit any documentary evidence in support.

The Landlord testified that the Tenants provided the dispute address as their forwarding address on July 1, 2017. Although unusual, it was assumed the Tenants had made arrangements to forward their mail. The Landlord also testified that the Landlord's agent, G.W., met with M.B. on July 1, 2017. At that meeting, M.B. signed a move-out condition inspection report that described a deduction of \$797.50, but confirmed that the fob/storage key deposit would be returned to the Tenants. According to the Landlord, a cheque for \$112.00 was sent to the forwarding address provided by the Tenants but was returned on July 13, 2017. The Landlord included a copy of the move-out condition inspection report and the envelope in which the cheque was sent to the Tenants.

The Tenant sounded uncertain but suggested that the forwarding address indicated on the signed move-out condition inspection report, and the deduction, must have been included at the beginning of the tenancy.

### Analysis

Based on the 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 them 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, I find it is more likely than not that the Tenants approved the deduction of \$797.50. First, M.B.'s signature appears on the move-out condition inspection report below the calculation showing the amount of the deduction. Further, to suggest that the forwarding address and the deduction were included on the move-out condition inspection report at the beginning of the tenancy is difficult to maintain. This is particularly true in light of the notation made on the move-out condition inspection report which stated: "see original move-in". That is, the move-in condition inspection report appears to have been a separate document that was not submitted into evidence by either party.

In light of the above, I find it is more likely than not that the Tenants approved of the \$797.50 deduction from the deposits held. Accordingly, they are not entitled to recover this amount. However, the Landlord retains the \$112.00 fob/storage key deposit. I order that the Landlord return this amount to the Tenants at the address provided on the Application immediately. During the hearing, M.B. confirmed that the address that appears on the Application is the Tenants' current address. This amount has not been doubled pursuant to section 38 of the *Act* because of my finding that the Landlord returned this amount to the forwarding address provided by the Tenants, although the cheque was returned to the Landlord.

The Tenants paid a \$100.00 filing fee to make the Application. However, as they were only partially successful, I grant the Tenants a monetary award of \$50.00 in partial recovery of the filing fee. Accordingly, pursuant to section 67 of the *Act*, I grant the Tenants a monetary order in the amount of \$162.00, which is comprised of \$112.00 for the fob/storage key deposit and \$50.00 towards recovery of the filing fee.

### Conclusion

The Tenant is granted a monetary order in the amount of \$162.00. 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 30, 2018

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Residential Tenancy Branch