



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding RANCHO MANAGEMENT SERVICES (B.C.) LTD.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNSD, OLC, FF

### Introduction

This hearing dealt with the tenants' application pursuant to the *Residential Tenancy Act* ("Act") for:

- authorization to obtain a return of double the amount of the security deposit, pursuant to section 38;
- an order requiring the landlords to comply with the *Act*, *Residential Tenancy Regulation* ("Regulation") or tenancy agreement, pursuant to section 62; and
- authorization to recover the filing fee for this application, pursuant to section 72.

"Tenant JB" and the two landlords did not attend this hearing, which lasted approximately 11 minutes. Tenant KB ("tenant") attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. The tenant confirmed that he had permission to speak on behalf of tenant JB as an agent at this hearing.

The tenant testified that the landlords were served with the tenants' application for dispute resolution hearing package on August 21, 2017, by way of registered mail. The tenant provided a Canada Post tracking number verbally during the hearing. In accordance with sections 89 and 90 of the *Act*, I find that the landlords were served with the tenants' application on August 26, 2017, five days after its registered mailing.

The tenant confirmed that the tenants were not seeking any other orders besides recovery of double the value of the security deposit and their filing fee. Accordingly, the remainder of their application is dismissed without leave to reapply.

### Issues to be Decided

Are the tenants entitled to a monetary award equivalent to double the value of the security deposit as a result of the landlords' failure to comply with the provisions of section 38 of the *Act*?

Are the tenants entitled to recover the filing fee for this application from the landlords?

### Background and Evidence

The tenant testified regarding the following facts. This tenancy began on February 1, 2014 and ended on July 31, 2017. Monthly rent in the amount of \$1,550.00 was payable on the first day of each month. A security deposit of \$775.00 was paid by the tenants and the landlords retained \$150.00 from the deposit and returned \$625.00 to the tenants by way of a cheque, dated August 10, 2017, which the tenant said that he cashed. The tenants provided a copy of the cheque with their application. A written tenancy agreement was signed by both parties and a copy was provided for this hearing. At paragraph 4 of the written tenancy agreement, the landlords indicated that the tenants paid a security deposit of \$775.00.

The tenant testified that both move-in and move-out condition inspection reports were completed for this tenancy but a copy of the move-out condition inspection report was not provided to the tenants by the landlords. The tenant said that a written forwarding address was provided by way of the move-out condition inspection report on July 31, 2017.

The tenant explained that the landlords had written permission on the move-out condition inspection report to keep \$110.00 from the tenants' security deposit. The tenant confirmed that the tenants did not receive an application for dispute resolution from the landlords to retain any amount from the security deposit.

The tenants seek a return of double the amount of their security deposit of \$775.00, totalling \$1,550.00, minus the \$110.00 portion that they agreed the landlords could retain and the \$625.00 that the landlords actually returned to the tenants. They also seek to recover the \$100.00 application filing fee from the landlords.

### Analysis

Section 38 of the Act requires the landlords to either return the tenants' security deposit or file for dispute resolution for authorization to retain the deposit, within 15 days after the later of the end of a tenancy and the tenants' provision of a forwarding address in writing. If that does not occur, the landlords are required to pay a monetary award, pursuant to section 38(6)(b) of the Act, equivalent to double the value of the security deposit. However, this provision does not apply if the landlords have obtained the tenants' written authorization to retain all or a portion of the security deposit to offset damages or losses arising out of the tenancy (section 38(4)(a)) or an amount that the Director has previously ordered the tenants to pay to the landlords, which remains unpaid at the end of the tenancy (section 38(3)(b)).

I make the following findings based on the undisputed testimony of the tenant. The tenancy ended on July 31, 2017. The tenants provided a written forwarding address to the landlords by way of the move-out condition inspection report on July 31, 2017. The tenants only gave the landlords written permission to retain \$110.00 from the deposit but instead the landlords retained \$150.00. The landlords' right to claim against the deposit for damages is extinguished because they failed to provide the tenants with a copy of the move-out condition inspection report, as required by section 36 of the Act. The landlords did not return \$665.00 from the deposit which is the \$775.00 minus the \$110.00 the tenants agreed that they could keep or make an application for dispute resolution to claim against the deposit within 15 days of July 31, 2017.

The landlords continue to hold a \$40.00 portion of the tenants' security deposit of \$775.00, after the tenants agreed to allow them to keep \$110.00 and they returned \$625.00 to the tenants.

Over the period of this tenancy, no interest is payable on the landlords' retention of the security deposit. In accordance with section 38(6)(b) of the Act and Residential Tenancy Policy Guideline 17, I find that the tenants are entitled to receive double the value of \$665.00, which is the security deposit of \$775.00 minus the \$110.00 that the tenants agreed they could keep, totalling \$1,330.00, from the landlords. The \$625.00 cheque that the tenants cashed from the landlords is deducted from this amount of \$1,330.00, for a balance of \$705.00.

As the tenants were mainly successful in this application, I find that they are entitled to recover the \$100.00 filing fee from the landlords.

Conclusion

I issue a monetary Order in the tenants' favour in the amount of \$805.00 against the landlords. The tenant(s) are provided with a monetary order in the above terms and the landlord(s) must be served with this Order as soon as possible. Should the landlord(s) fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

The tenants' application for an order requiring the landlords to comply with the *Act*, *Regulation* or tenancy agreement is dismissed without leave to reapply.

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: February 19, 2018

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Residential Tenancy Branch