



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNSD, FF

### Introduction

This hearing convened as a result of Tenants' Application for Dispute Resolution wherein the Tenants requested return of their security deposit and to recover the filing fee.

The hearing was conducted by teleconference on April 25, 2018. Both parties called into the hearing and were provided the opportunity to present their evidence orally and in written and documentary form and to make submissions to me.

The parties agreed that all evidence that each party provided had been exchanged. No issues with respect to service or delivery of documents or evidence were raised.

I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Branch Rules of Procedure*. However, not all details of the respective submissions and or arguments are reproduced here; further, only the evidence relevant to the issues and findings in this matter are described in this Decision.

At the conclusion of the Landlord's testimony he alleged the *Residential Tenancy Act* did not apply as he claimed to have retained use of one of the rooms in the rental home as well as sharing a bathroom with the Tenants. Consequently, the question of my jurisdiction to hear the dispute was at issue.

### Issues to be Decided

1. Does the *Act* apply to the dispute between the parties?
2. Are the Tenants entitled to return of their security deposit?
3. Should the Tenants recover the filing fee paid?

### Background and Evidence

The Tenant, P.O., testified as follows.

The Tenant testified that the Landlord lived on the same property as the rental home, but he lived in a self-contained unit (the garage). She further stated that the rental unit was a house and she and the other Tenant rented two bedrooms on the upstairs floor. She stated that when they first viewed the rental unit the Landlord confirmed that they could have both their bedroom and a smaller spare room for \$750.00 a month. The Tenant stated that they paid a \$375.00 security deposit.

The Tenant stated that they moved in May 1, 2017 and at the time there was another person, T., living in the spare room and he didn't move out until May 15, 2017. When T. moved out the Landlord told them he planned to rent the spare room to another person. When they realized the Landlord was not going to give them the two bedrooms for which they paid rent, they decided to move out.

The Tenants moved out on May 31, 2017. She stated that they asked him for their security deposit and he did not provide it, at which time they provided him with their forwarding address in writing.

The Tenant stated that the Landlord did not return the security deposit to the address they provided. She also confirmed he did not make an application for its retention.

The Landlord testified as follows. He confirmed that he received the Tenants' forwarding address on July 15, 2017. He further confirmed that he did not make an application for dispute resolution within 15 days of receipt of their forwarding address as they breached the agreement and he felt he was entitled to retain the funds.

The Landlord then stated that he retained access to the spare bedroom in the rental unit and as such the *Act* should not apply. The Landlord claimed that T., the person in the small bedroom was renting the room during the winter. The Landlord stated that during the winter he lives in the biggest bedroom (the one he claimed to have rented to the Tenants) and then in the summer he lives in the garage and keeps the smaller bedroom for his use as an AirBnB.

The Landlord then stated that when the Tenants moved in, T. was living in the spare room. He claimed that he told the Tenants they could use the spare room to store their paragliding equipment and that he would also store his equipment in that room.

The Landlord also claimed that he continued to have access to the rental home as he stored his paragliding items in the spare room and used the common bathtub.

In reply to the Landlord's submissions, the Tenant stated that the first she has heard of the Landlord using the bathroom was at the hearing. The Tenant also stated that his claim that he used the room for storage of paragliding equipment was false as well. She stated that when T. moved out the Landlord messaged on May 18, 2017 to confirm that he was renting the room out to another person. At this time, the Tenants decided to move out as they realized the Landlord was not going to give them both bedrooms as they had agreed.

The Tenant stated that the other Tenant, B., rented another room in the house which was bigger and had its own bathroom for \$550.00 per month.

### Analysis

Neither party submitted any evidence in support of their position. Based on the testimony of the parties and on a balance of probabilities, I find as follows.

I find that the parties entered into a tenancy agreement such that the Tenants would rent two rooms in the rental home for \$750.00 per month commencing May 1, 2017. I am persuaded this sum was for two rooms based on the Tenant's testimony that another renter, B., rented a larger room for \$550.00 per month.

I do not accept the Landlord's evidence that he was to retain possession of the spare room and that he used the bathroom in the main house. I find it more likely the Landlord tailored his testimony after hearing my questions to the Tenant regarding why they shared a common address.

Further, the Landlord stated that he retained access to the spare room to rent out as an AirBnB, and then said he told the Tenants they could store their paragliding equipment in this room. I find these statements to be incongruous and find it more likely that the \$750.00 charged was for both the larger room and the spare room.

I accept the Tenant's testimony that the first she heard of the Landlord alleging he used the bathtub and stored items in the spare room was at the hearing; she sounded genuinely surprised at his testimony.

I find that the parties did not share a bathroom or kitchen and that the living situations is not an exception as provided in section 4(c). I therefore find that the *Act* applies to this tenancy.

I will now address the Tenants' claim for return of their security deposit.

I further find, based on the parties' testimony, that the Landlord received the Tenants' forwarding address on July 15, 2017.

There was no evidence to show that the Tenants had agreed, in writing, that the Landlord could retain any portion of the security deposit.

There was also no evidence to show that the Landlord had applied for arbitration, within 15 days of the end of the tenancy or receipt of the forwarding address of the Tenants, to retain a portion of the security deposit, as required by section 38(1) of the *Act*.

Consequently I find that the Landlord has breached section 38 of the *Act*.

The security deposit is held in trust for the Tenants by the Landlord. The Landlord may only keep all or a portion of the security deposit through the authority of the *Act*, such as an order from an Arbitrator or the Tenants' written agreement.

Section 38(6) provides that if a Landlord does not comply with section 38(1), the Landlord must pay the Tenants double the amount of the security deposit. The legislation does not provide any flexibility on this issue.

### Conclusion

Having made the above findings, I must order, pursuant to sections 38 and 67 of the *Act*, that the Landlord pay the tenant the sum of \$850.00, comprised of double the security deposit (\$375.00 x 2) and the \$100.00 fee for filing this Application.

The Tenants are granted a Monetary Order in the amount of \$850.00 and must serve a copy on the Landlord. Should the Landlord not pay as required the Tenants may file and enforce the Monetary Order in the B.C. Provincial Court (Small Claims Division).

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: April 27, 2018

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Residential Tenancy Branch