



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNDCT, MNSD, FFT

### Introduction

This hearing was convened as a result of the tenants' Application for Dispute Resolution ("application") seeking remedy under the *Residential Tenancy Act* ("Act"). The tenants applied for the return of their security deposit, for \$2,016.00 in money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and to recover the cost of the filing fee.

The tenants and the landlord KO ("landlord") appeared at the teleconference hearing and gave affirmed testimony. During the hearing the parties presented his evidence. A summary of the evidence is provided below and includes only that which is relevant to the hearing.

Neither party raised any concerns regarding the service of documentary evidence.

### Preliminary and Procedural Matters

At the outset of the hearing, the tenants confirmed that the only time they provided their forwarding address to the landlord was by filing this application before me. The parties were advised that I find that the tenants' application for the return of their security deposit is premature, due to the fact that the tenants confirmed they did not provide their written forwarding address in writing to the landlord as required by section 38 of the *Act*. As a result, and in accordance with Residential Tenancy Branch Practice Directive 2015-01 I find that the landlord has been served with the tenants' written forwarding address of the date of this hearing, October 23, 2018. The tenants' new written forwarding address was confirmed by the parties and has been included on the cover page of this decision for ease of reference.

The landlord must deal with the tenants' security deposit within 15 days of the date of the hearing, October 23, 2018 in accordance with section 38 of the *Act*.

In addition, the parties confirmed their email addresses at the outset of the hearing. The parties confirmed their understanding that the decision would be emailed to both parties.

Given the above, I will not deal with the security deposit as I find the application for the return of the security deposit is premature. Therefore, I will only deal with the remainder of the tenants' monetary claim which I will describe further below.

Furthermore, the landlord was advised that their monetary order worksheet would not be considered as the Residential Tenancy Rules of Procedure ("Rules") do not permit a respondent to make a claim through the applicant's application and instead require both parties to make their own applications that are to be properly served in accordance with the Rules. Therefore, I find there is no cross-application before me from the landlord to consider.

#### Issues to be Decided

- Are the tenants entitled to any monetary compensation under the *Act*?
- Are the tenants entitled to the recovery of the cost of the filing fee under the *Act*?

#### Background and Evidence

A copy of the tenancy agreement was submitted in evidence. A month to month tenancy began on December 1, 2017. The tenants claim they vacated the rental unit on February 23, 2018 whereas the landlord claims that she did not become aware that the tenants vacated the rental unit until March 10, 2018. According to the tenancy agreement, the tenants paid a \$500.00 security deposit. I note that while the tenants have requested their security deposit back of \$550.00 that the tenants were incorrect as to the amount listed on the tenancy agreement and therefore in the amount claimed in their application.

The tenants' claim for \$2,016.00 contains an adding error and actually totals \$2,066.30 however, I find it would be prejudicial to the landlord to allow the amount claimed to increase so will limit the claim amount to \$2,016.00 comprised as follows:

ITEM DESCRIPTION	AMOUNT CLAIMED
1. BC Hydro Dec 1 to Jan 4	\$177.44
2. BC Hydro Jan 5 to Mar 1	\$238.86
3. Security deposit	\$550.00
4. Rent for Feb 2018	\$1,100.00
<b>TOTAL</b>	<b>\$2,016.00</b>

Regarding items 1 and 2, the tenants were poorly prepared for the hearing as neither of the tenants had the documents before them at the hearing to explain how they arrived at the amounts claimed. Eventually the male tenant stated that they were claiming for the return of 1/3 of the utilities they paid. The tenancy agreement was reviewed during the hearing and all parties confirmed that electricity and heat were not included in the monthly rent and were the responsibility of the tenants. Furthermore, the tenants confirmed that they did not have dated letters submitted to the landlord to complain about the heat in the rental unit submitted in evidence. The parties confirmed that there was no natural gas in the home. According the landlord the tenants vacated the rental unit without proper written notice.

Regarding item 3, as described above, I find the tenants' application for the return of their security deposit to be premature. The tenants have leave to reapply for the return of their security deposit if the landlord does not deal with the tenants' security deposit in accordance with section 38 of the *Act*. The written forwarding address of the tenants has been included on the cover page of this decision.

Regarding item 4, the tenants referred to two undated letters and blurry photos in evidence and claim that they should have their February 2018 rent returned due to issues relating to high heating costs in the rental unit. The landlord confirmed that heating was not included in the monthly rent.

### Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on the balance of probabilities, I find the following.

Test for damages or loss

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in sections 7 and 67 of the *Act*. Accordingly, an applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did what was reasonable to minimize the damage or loss.

In this instance, the burden of proof is on the tenants to prove the existence of the damage/loss and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the landlord. Once that has been established, the tenants must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the tenants did what is reasonable to minimize the damage or losses that were incurred.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

Items 1 and 2 – I find the tenants have failed to meet part one of the test for loss described above. I find the tenancy agreement does not include heat and I afford the undated letters from the tenants no weight. In addition, I afford the blurry photos no weight as I am unable to determine what the photos are of and what they are intended to represent. Therefore, I find the tenants have failed to meet the burden of proof and as a result, I dismiss items 1 and 2 without leave to reapply due to insufficient evidence.

Item 3 – As noted above, I find this item to be premature and have addressed that above.

Item 4 – I find the tenants were poorly prepared for this hearing and failed to have important documents before them for the hearing. In addition, I find the undated letter and blurry photos do not support the return of any portion of rent and therefore, I dismiss this item due to insufficient evidence, without leave to reapply.

Given the above, as I find this application has no merit, I do not grant the return of the filing fee.

Conclusion

Item 3 which relates to a \$500.00 security deposit has been applied for prematurely by the tenants. I grant the tenants leave to reapply for the return of their security deposit if the landlord fails to deal with the written forwarding address as indicated above.

The remainder of the tenants' application has no merit and is dismissed in full due to insufficient evidence.

I do not grant the filing fee.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: October 23, 2018

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Residential Tenancy Branch