



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding BCG 1209 HOLDINGS LTD. C/O FIRSTSERVICE RESIDENTIAL  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      FFL, MNDCL-S

### Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Landlord on June 11, 2018 (the "Application"). The Landlord applied for compensation for monetary loss or other money owed, to keep the security deposit and reimbursement for the filing fee.

The Tenants appeared at the hearing. Nobody appeared at the hearing for the Landlord. I waited 10 minutes at the outset of the hearing to allow someone for the Landlord to call into the hearing; however, nobody did. I proceeded with the hearing in the absence of the Landlord. The hearing lasted 34 minutes. Nobody called into the hearing for the Landlord for the duration of the hearing.

Tenant C.T. provided the correct spelling of her name and I amended the Application to reflect this. The Tenants also provided the correct name of the Landlord as noted on the tenancy agreement provided and I amended the Application to reflect this. Both amendments are reflected in the style of cause.

I explained the hearing process to the Tenants and answered their questions in this regard. The Tenants provided affirmed testimony.

The Tenants advised that they want their security deposit back and asked for double the security deposit if I found the Landlord breached the *Residential Tenancy Act* (the "Act") in relation to the security deposit.

Both parties had submitted evidence prior to the hearing. The Tenants advised that they received the hearing package and tenancy agreement from the Landlord. The Tenants testified that they served their evidence on the Landlord by registered mail on November 21, 2018. The Tenants provided Tracking Number 1 as noted on the front

page of this decision. The Tenants testified that the package was sent to the Landlord's address as noted on the Application and was addressed to the representative noted on the Application. With permission, I looked the Tracking Number up on the Canada Post website which shows the package was delivered and signed for December 3, 2018.

I have concerns about the date the evidence package was received by the Landlord as it was the day before the hearing. However, I have considered a letter and email submitted by the Tenants as these were previously provided to agents for the Landlord and therefore the timing of receiving this as evidence on the hearing does not raise the same concerns as evidence the Landlord would have been receiving for the first time.

Rule 7.3 of the Rules of Procedure addresses the consequences of parties not attending a hearing and states:

If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply.

Policy Guideline 17 deals with security deposits and states in part at page two:

The arbitrator will order the return of a security deposit, or any balance remaining on the deposit, less any deductions permitted under the Act, on:

- a landlord's application to retain all or part of the security deposit; or
- a tenant's application for the return of the deposit.

unless the tenant's right to the return of the deposit has been extinguished under the Act. The arbitrator will order the return of the deposit or balance of the deposit, as applicable, whether or not the tenant has applied for dispute resolution for its return.

Given the Landlord failed to attend the hearing, I dismiss the Application without leave to re-apply.

Pursuant to Policy Guideline 17, I will consider whether the Tenants are entitled to the return of the security deposit.

The Tenants were given an opportunity to present relevant oral evidence, make relevant submissions and ask relevant questions. I have considered a letter and email submitted

by the Tenants and all oral testimony of the Tenants. I will only refer to the evidence I find relevant in this decision.

The only evidence submitted by the Landlord was the tenancy agreement which I have considered.

### Issue to be Decided

1. Are the Tenants entitled to the return of double the security deposit?

### Background and Evidence

I reviewed the written tenancy agreement with the Tenants who agreed it is accurate. It is between the Landlord and Tenants in relation to the rental unit. The tenancy started April 1, 2018 and was for a fixed term ending March 31, 2019. Rent was \$1,900.00 per month due on the first day of each month. The Tenants paid a \$950.00 security deposit. The agreement is signed by one of the Tenants and on behalf of the Landlord. The Tenants testified that it was understood that both Tenants were tenants in relation to the agreement.

The Tenants testified that the tenancy ended May 31, 2018.

The Tenants testified that they provided agents for the Landlord with their forwarding address in person and by email. Tenant C.T. testified that the forwarding address was provided to the individual who did the move-out inspection on behalf of the Landlord on May 29, 2018 in person and that it was in the form of a letter. She said the letter was also emailed to the representative for the Landlord as named on the Application.

The Tenants had submitted a copy of the letter and email.

The Tenants testified that the Landlord did not have an outstanding monetary order against the Tenants at the end of the tenancy. The Tenants testified that they did not agree in writing at the end of the tenancy that the Landlord could keep some or all of the security deposit.

Tenant C.T. testified that her and an agent for the Landlord did a move-in and move-out inspection.

### Analysis

Under sections 24 and 36 of the *Act*, landlords and tenants can extinguish their rights in relation to the security deposit if they do not comply with the *Act* and *Residential Tenancy Regulation* (the "*Regulations*"). Further, section 38 of the *Act* sets out specific requirements for dealing with a security deposit at the end of a tenancy.

I accept the undisputed testimony of Tenant C.T. that her and an agent for the Landlord did a move-in and move-out inspection. Based on this, I find the Tenants did not extinguish their rights in relation to the security deposit under sections 24 or 36 of the *Act*.

Extinguishment under sections 24 and 36 of the *Act* only relates to claims for damage to the rental unit. Here, the Landlord applied to keep the security deposit based on a liquidated damages clause in the tenancy agreement and not for damage to the rental unit. I find it irrelevant whether the Landlord extinguished their right to claim against the security deposit for damage to the rental unit in the circumstances.

Pursuant to section 38(1) of the *Act*, the Landlord was required to repay the security deposit or claim against it within 15 days of the later of the end of the tenancy or receiving the Tenants' forwarding address in writing.

I accept the undisputed testimony of the Tenants that the tenancy ended May 31, 2018. Further, I accept the undisputed testimony of the Tenants that they provided their forwarding address in writing to an agent for the Landlord on May 29, 2018 at the move-out inspection.

I find the Landlord had 15 days from May 31, 2018, the end of the tenancy, to repay the security deposit or claim against it. The Application was filed June 11, 2018, within the 15-day time limit. Therefore, I find the Landlord complied with section 38(1) of the *Act* and that the Tenants are not entitled to double the security deposit back.

In relation to the Landlord's claim, this is dismissed without leave to re-apply as the Landlord failed to attend the hearing and provide a basis for the claim.

Therefore, the Landlord must return the \$950.00 security deposit to the Tenants. I note that no interest is owed on the security deposit as the amount owed has been 0% since 2009. The Tenants are issued a Monetary Order for the \$950.00.

Conclusion

The Application is dismissed without leave to re-apply as the Landlord failed to attend the hearing.

The Tenants are not entitled to the return of double the security deposit as the Landlord complied with section 38(1) of the *Act*.

The Tenants are entitled to the return of the \$950.00 security deposit as the Landlord failed to attend the hearing and provide a basis for the claim to keep the security deposit.

The Tenants are entitled to a Monetary Order in the amount of \$950.00. This Order must be served on the Landlord and, if the Landlord does not comply with the Order, it may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Act*.

Dated: December 05, 2018

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Residential Tenancy Branch