



# 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, made on November 26, 2018 (the "Application"). The Tenants applied for the following relief, pursuant to the Residential Tenancy Act (the "Act"):

- a monetary order for damage and compensation;
- an order that the Landlords return all or part of the security deposit and/or pet damage deposit; and
- an order granting recovery of the filing fee.

The Tenant T.T., the Tenant's Advocate, A.P., as well as the Landlords, R.P and G.S., attended the hearing at the appointed date and time, and provided affirmed testimony.

T.T. testified that she served her Application and documentary evidence package to the Landlords by registered mail on November 27, 2018. The Landlords confirmed receipt. Pursuant to section 88 and 89 of the *Act*, I find the above documents were sufficiently served for the purposes of the *Act*.

### Preliminary Matters

At the start of the hearing it was discussed that Landlord G.S. should not be named as a party to the Application. While he was named by the Tenants in their Application, he stated that he has nothing to do with the tenancy and was therefore seeking to have the Application amended to remove his name. The parties confirmed that the tenancy agreement is between the Tenants and Landlord R.P. As such, I find it appropriate to remove G.S. from the Application.

The Landlord testified that he served the Tenants with his documentary evidence by registered mail on March 11, 2019. The T.T. confirmed receipt.

According to the Residential Tenancy branch Rules of Procedure 3.15 (the “Rules of Procedure”), the respondent must ensure evidence that the respondent intends to rely on at the hearing is served on the applicant and submitted to the Residential Tenancy Branch as soon as possible, but not less than seven days before the hearing. The Landlord testified that he served his documentary evidence to the Tenant on March 11, 2019, three days before the hearing.

T.T confirmed receipt and indicated that she has had an opportunity to review the Landlord’s evidence and wished to continue with the hearing in lieu of an adjournment. As such, I find that the Landlord’s documentary evidence was sufficiently served, pursuant to Section 71 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. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

#### Issue(s) to be Decided

1. Are the Tenants entitled to a monetary order for damage or compensation, pursuant to Section 67 of the *Act*?
2. Are the Tenants entitled to an order that the Landlord return all or part of the security deposit and/or pet damage deposit, pursuant to section 38 of the *Act*?
3. Are the Tenants entitled to an order granting recovery of the filing fee, pursuant to section 72 of the *Act*?

#### Background and Evidence

The parties testified and agreed to the following; the tenancy began on October 2, 2017. Rent in the amount of \$1,700.00 was due to the Landlord each month. A security deposit in the amount of \$850.00 was paid and is currently being held by the Landlord. The tenancy ended on January 31, 2018. The Tenants sent their forwarding address to

the Landlord in writing by registered mail on July 9, 2018. The Landlord stated he received the Tenant's forwarding address on July 18, 2018. The Tenants submitted a copy of the tenancy agreement in support.

T.T testified that the Tenants are seeking the return of their \$850.00 security deposit. T.T stated that she requested the return of the Tenants security deposit on July 9, 2018, providing the Landlord with the Tenants' forwarding address in writing by registered mail. T.T. stated that there was no condition inspection report completed and that the Landlord has not yet returned any of the \$850.00 security deposit to the Tenants.

In response, the Landlord testified that he received the Tenants forwarding address by registered mail on July 18, 2018. The Landlord stated that he did not return the security deposit and has not made an application to retain the security deposit.

A.P. testified that the Tenants are seeking compensation in the amount of \$1,700.00 in relation to their claim that the Landlord altered the tenancy agreement to include additional terms that they did not agree to at the start of the tenancy. In response, the Landlord stated that the agreement was altered.

A.P. testified that the Tenants are claiming \$1,700.00 in compensation relating the Landlord ending the tenancy early. A.P. stated that the Tenants received a caution notice from the Landlord on January 26, 2018. A.P stated that the Tenant's noticed that the Landlord had placed an ad on January 29, 2019 indicating that the rental unit was available to rent on February 1, 2019. The Tenants decided to move out of their rental unit as a result. The Tenants are seeking the return of the moving costs associated with vacating the rental unit in the amount of \$302.00. The Tenants submitted a moving receipt in support.

The Landlord testified that he did serve the Tenants with a caution notice, however, he did not serve a notice to end tenancy of any kind. The Landlord insists that the Tenants moved out on their own volition and does not feel he should be responsible for the tenants claim for compensation.

The Tenants are seeking \$122.78 in relation to the costs associated with changing cable providers. A.P. testified that the basic cable was included in their rent. A.P stated that the Tenants came across an inappropriate recording that the Landlord stored on the shared cable box. A.P. stated that the Tenants took exception to this and asked for different service. A.P. stated that he Landlord proceeded to disconnect the cable service

which resulted in the Tenants seeking their own cable service through a different cable provider.

In response, the Landlord denies that there was an inappropriate recording on the shared cable box and stated that the Tenants decided to switch their service as they were unsatisfied with the basic cable package included in the rent and wished to get more channels through a different cable provider. The Landlord denies that he disconnected the cable service, stating that the cable company was responsible for the brief interruption in service while the exchange of cable providers took place.

The Tenants are seeking compensation in the amount of \$1,700.00 in relation to the fact that the Landlord has two surveillance cameras installed on the exterior of the residence. A.P. testified that there was a camera installed on the front and the back of the residence, which the Tenants feel as though this was an invasion of their privacy.

In response, the Landlord testified that the cameras had been installed prior to the commencement of the Tenancy between the parties and that he is entitled to have cameras for security purposes.

Lastly, the Tenants are seeking compensation in the amount of \$3,400.00 in relation to the Landlord cashing a postdated cheque on March 1, 2018 in the amount of \$1,700.00. A.P. testified that the tenancy ended on January 31, 2019. A.P. stated that the Tenants did not give the Landlord permission to cash their postdated cheque and don't feel as though they should be held responsible for any further rent payments beyond end of their tenancy. Furthermore, A.P. indicated that the Landlord threatened the Tenants on January 31, 2019 that if the Tenants were to return to the rental unit, that he would be calling the Police to have them removed. A.P. stated that this reconfirms that the Landlord intended to end the tenancy on January 31, 2019.

In response, the Landlord testified that he feels as though he was justified in cashing the Tenants' postdated cheque as they ended their tenancy without notice. The Landlord confirmed sending the Tenant's a message that if they returned, Police would be called. However, this comment was only made once he witnessed the Tenants moving out of the rental unit early.

### Analysis

Based on the documentary evidence before me for consideration 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 a claim against them by filing an application for dispute resolution within 15 days after receiving a tenant's forwarding address in writing or the end of the tenancy, whichever is later. When a landlord fails to comply with section 38(1) of the Act, and does not have authority under sections 38(3) or 38(4) of the Act to withhold any deposits, section 38(6) stipulates that a tenant is entitled to receive double the amount of the security deposit.

In this case, the parties agreed that the Tenants vacated the rental unit on January 31, 2018 and provided the Landlord with their forwarding address by registered mail on July 9, 2018. I find that the Landlord confirmed receipt of the Tenants forwarding address on July 18, 2018. As there is no evidence before me that that the Landlord was entitled to retain all or a portion of the security deposit under sections 38(3) or 38(4) of the Act, I find pursuant to section 38(1) of the Act, that the Landlords had until August 2, 2018 to repay the deposit or make an application for dispute resolution. The Landlord stated that he did neither.

In light of the above, and pursuant to section 38(6) of the Act, I find the Tenants are entitled to an award of double the amount of the security deposit paid to the Landlord ( $\$850.00 \times 2 = \$1,700.00$ ).

Section 67 of the Act empowers me to order one party to pay compensation to the other if damage or loss results from a party not complying with the Act, regulations or a tenancy agreement.

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 for in sections 7 and 67 of the Act. Pursuant to Residential Tenancy Policy Guideline #16 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 case, the burden of proof is on the Tenant to prove the existence of the damage or 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 Tenant must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the Tenant did what was reasonable to minimize the damage or losses that were incurred.

The Tenants are seeking compensation in the amount of \$1,700.00 in relation to their claim that the Landlord altered the tenancy agreement to include additional terms that they did not agree to at the start of the tenancy. I find that there is insufficient evidence before me to demonstrate that the Landlord changed the tenancy agreement as the tenants did not refer to an original tenancy agreement between the parties to compare. Furthermore, I find that the Tenants provided insufficient evidence that they suffered a loss as a result. For these reasons, I dismiss this portion of the Tenants' claim, without leave to reapply.

The Tenants are seeking \$1,700.00 in compensation relating the Landlord ending the tenancy early. After receiving a caution notice from the Landlord on January 26, 2018, the Tenants vacated the rental unit on January 31, 2018. The Tenants are also seeking the return of the moving costs associated with vacating the rental unit in the amount of \$302.00. I find that the Tenants provided insufficient evidence to demonstrate that the Landlord ended their tenancy. I find that the Landlord is entitled to issue a caution notice to the Tenants which contained no indication that the tenancy was ending. I find that after receiving the caution notice, the Tenants decided to vacate the rental unit on their own volition. As such, I dismiss the Tenants claim for compensation relating to the early end to tenancy as well as for recovering moving costs, without leave to reapply.

The Tenants are seeking \$122.78 in relation to the costs associated with changing cable providers. A.P stated that the Tenants came across an inappropriate recording that the Landlord stored on the shared cable box. A.P. stated that the Tenants took exception to this and asked for different cable service. The Landlord stated that the Tenants decided to switch their cable service as they were unsatisfied with the basic cable package included in the rent and wished to get more channels through a different cable provider.

I find that the Landlord did not breach the Act, as he continued to provide cable service which was included in the rent. I find that if the Tenants were unsatisfied with certain aspects of the cable service provided in their tenancy, they could have discussed alternative options with the Landlord to mitigate the situation. Instead, the Tenants

chose to switch cable providers and are responsible for the costs in doing so. In light of the above, I dismiss this portion of the Tenants claim without leave to reapply.

The Tenants are seeking compensation in the amount of \$1,700.00 in relation to the fact that the Landlord had two surveillance cameras installed on the exterior of the residence during their tenancy. I find that the Landlord is entitled to having security cameras outside of his residence for security reasons and has not breached the Act. As a result, I dismiss this portion of the tenants claim without leave to reapply.

Lastly, the Tenants are seeking compensation in the amount of \$3400.00 in relation to the Landlord cashing a postdated cheque on March 1, 2018 in the amount of \$1,700.00. A.P. testified that the tenancy ended on January 31, 2018. The Landlord testified that he feels as though he was justified in depositing the Tenants' postdated cheque as they ended their tenancy without notice.

I find that the Landlord was not entitled to arbitrarily deposit the Tenants' March 1, 2018 rent cheque. If the Landlord feels as though he is entitled to compensation relating to unpaid rent, he is at liberty to make an application for dispute resolution. I find that the Tenants are entitled to the return of \$1,700.00 in relation to the March 1, 2018 rent which was deposited by the Landlord. I find that the Tenants have provided insufficient evidence to support the remaining \$1,700.00 portion of their claim.

Having been partially successful, I also find the Tenants are entitled to recover the \$100.00 filing fee paid to make the Application.

Pursuant to section 67 of the Act, I find the Tenants are entitled to a monetary order in the amount of \$3,500.00, which has been calculated as follows:

<b>Claim</b>	<b>Award</b>
Doubled Security Deposit :	\$1,700.00
Return of March 2018 Rent	\$1,700.00
Filing fee	\$100.00
<b>TOTAL:</b>	<b>\$3,500.00</b>

## Conclusion

The Landlord breached Section 38 of the *Act* and arbitrarily deposited rent that he was not entitled to. As such, the Tenants are granted a monetary order in the amount of \$3,500.00. The order should be served as soon as possible and may be filed in and enforced as an order of the Provincial Court of BC (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: April 2, 2019

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Residential Tenancy Branch