



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNSD, FF

### Introduction

This matter dealt with an application by the Tenants for the return of the security deposit, prepaid rent and the filing fee for this proceeding.

The Tenant said he served the Landlord with the Application and Notice of Hearing (the “hearing package”) by personal delivery on December 24, 2018. Based on the evidence of the Tenant, I find that the Landlord was served with the Tenants’ hearing package as required by s. 89 of the Act and the hearing proceeded in the Landlord’s absence.

### Issues(s) to be Decided

1. Are the Tenants entitled to the return of the security deposit?
2. Are the Tenants entitled to the return of prepaid rent?

### Background and Evidence

This tenancy was to start on December 1, 2018 as a fixed term tenancy for 12 months. The Tenants did not move into the rental unit as the Landlord was occupying the unit and the Landlord did not move out. The male Tenant said the unit was not available as at December 1, 2018 for them to move in to so they made a mutual agreement with the Landlord to end the tenancy before it started. The Tenant continued to say they prepaid the security deposit of \$575.00 and one month’s rent of \$1,150.00 on October 6, 2018. The Tenant submitted text messages from the Landlord saying she would be staying in the unit awhile longer and that she would return the deposit. The Tenant said the Landlord has stopped communicating with them and has not returned the security deposit or the prepaid rent. The Tenants requests and ordered to recover the security deposit and prepaid rent in the amount of \$1,725.00. As well the Tenants requested to recover the filing fee of \$100.00 if their application is successful. The male Tenant said they have not given the Landlord a physical forwarding address in writing as of yet, but they provided the Landlord with an e-transfer address to send the money to. The

Tenant said their previous money transactions were all done by e-transfer and they believed that is how the Landlord would send their deposits back.

### Analysis

Section 16 of the Act says the rights and obligations of both the Tenant and Landlord begin the date the tenancy agreement is entered into. With verbal or unsigned electronic tenancy agreements once moneys have been paid for a security deposit or prepaid rent the tenancy is deemed to have started. I find there is a tenancy agreement in this situation and the Residential Tenancy Act has jurisdiction.

Further as the Landlord did not provide the rental unit as agreed the Landlord did not meet her contractual obligations in the tenancy agreement. Consequently I find the Landlord has no right to retain either the security deposit or the prepaid rent paid to the Landlord by the Tenants. I find the Tenants have established grounds for the return of both the security deposit of \$575.00 and the prepaid rent of \$1,150.00 in the amount of \$1,725.00.

As the Tenants have been successful in this matter I also order the Tenants to recover the filing fee of \$100.00 from the Landlord.

I grant the Tenants a monetary order for \$1,825.00.

### Conclusion

I find in favour of the Tenants' monetary claim. Pursuant to sections 16, 67 and 72 of the Act, I grant a Monetary Order for \$1,825.00 to the Tenant. The order must be served on the Respondent and is enforceable through the Provincial Court of British Columbia (small claims court) 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 *Residential Tenancy Act*.

Dated: April 15, 2019

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Residential Tenancy Branch