



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDCL-S, FFL

### Introduction

This hearing was convened as a result of the landlords' application for dispute resolution under the Residential Tenancy Act (the "Act"). The landlords applied for a monetary order for money owed or compensation for damage or loss under the Act and for recovery of the filing fee paid for this application.

The landlords' agent, the tenant and tenant's advocate attended, the hearing process was explained and they were given an opportunity to ask questions about the hearing process.

The evidence was discussed and each party confirmed receiving the other's evidence in advance of the hearing.

Thereafter the participants were provided the opportunity to present their evidence orally and to refer to relevant documentary and photographic evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all oral, photographic, and documentary evidence before me that met the requirements of the Dispute Resolution Rules of Procedure (the "Rules"); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

Words utilizing the singular shall also include the plural and vice versa where the context requires.

### Issue(s) to be Decided

Are the landlords entitled to monetary compensation from the tenant and to recover their filing fee paid for this application?

### Background and Evidence

The landlord's agent ("agent"), their son, stated that the rental unit was advertised on popular websites, resulting in the tenant calling the landlords on January 16, 2019.

The agent submitted that the tenant came on January 17, 2019, paid a security deposit of \$500.00 on that date, and arranged to rent the rental unit starting on February 1, 2019. The agent said the tenant never provided her personal information or address and there was never a written tenancy agreement signed.

The agent submitted that the tenant never moved into the rental unit, which caused the landlords to suffer a loss of rent for February 2019 in the amount of \$1,400.00. the agent submitted that the rental unit could not be re-rented until March 18, 2019.

The landlords' monetary claim is as follows:

| ITEM DESCRIPTION                          | AMOUNT CLAIMED    |
|-------------------------------------------|-------------------|
| 1. Security "damage" deposit              | \$500.00          |
| 2. Remainder of security "damage" deposit | \$200.00          |
| 3. February 2019 rent                     | \$1,400.00        |
| <b>TOTAL</b>                              | <b>\$2,100.00</b> |

The landlords' relevant evidence included a monetary order worksheet, a receipt and invoice for "damage" deposit, and an unsigned tenancy agreement.

In response to my inquiry, the agent said that his mother asked him to create the receipt and invoice for the security deposit. It was not made clear if the agent had seen the transaction.

### *Tenant's response-*

The tenant's advocate said that the tenant paid the landlords \$700.00 in cash for the security deposit, not \$500.00 and that on January 28, 2019, she attempted to contact the landlords, without success. The advocate submitted that the tenant did not receive a receipt from the landlords.

The advocate submitted that the landlords failed to provide access to the rental unit, although a tenancy was formed, depriving the tenant of a rental unit in February 2019.

The advocate submitted that the landlord informed her the rental unit had been rented to someone else. He also submitted that the Ministry of Social Development completed form submitted into evidence shows that a tenancy was formed, that the monthly rent was to be \$1,400.00, and that the tenant paid a security deposit of \$700.00.

The advocate submitted that the tenant has requested from the landlord the return of her security deposit of \$700.00, and provided her written forwarding address. The tenant submitted a copy of the letter.

### Analysis

Under section 7(1) of the Act, if a landlord or tenant does not comply with the Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other party for damage or loss that results. Section 7(2) also requires that the claiming party do whatever is reasonable to minimize their loss. Under section 67 of the Act, an arbitrator may determine the amount of the damage or loss resulting from that party not complying with the Act, the regulations or a tenancy agreement, and order that party to pay compensation to the other party. In this case, the landlords have the burden of proof to substantiate their claim on a balance of probabilities.

In the case before me, I find the undisputed evidence is that a tenancy was formed between these parties for a start date of February 1, 2019, with a monthly rent of \$1,400.00, and a security deposit of \$700.00 owed by the tenant. I relied upon the testimony of both parties and upon the Ministry of Social Development's form.

The parties, however, did not agree upon other matters, such as whether the tenant refused to move into the rental unit or whether the rental unit was made available to the tenant.

I have reviewed the evidence submitted and I am unable to determine upon a balance of probabilities whether the tenant refused to move into the rental unit or not. I was not provided proof of interaction or attempts at communication between the parties. I also was not convinced that the tenant received the receipt for the security deposit, as it was confirmed that the landlord had her agent prepare the receipt. I note the receipt appeared to be on a generic, computer generated online form.

Even if the tenant failed to move into the rental unit, I find the landlords failed to submit sufficient evidence that they took reasonable measures to minimize their loss of monthly rent for February 2019, as was their claim.

I find one way in this instance is to immediately start advertising the rental unit. I was not provided proof of the online advertisements. The landlords failed to submit proof of the start date, if any, the nature and frequency of the advertising. As such, I was unable to examine the evidence to ensure that the landlords met their requirement to take reasonable measures to minimize their loss for February 2019.

As noted, the onus is on the landlord in this case to prove their monetary claim and for the reasons noted above, I find that they have not, on a balance of probabilities.

I therefore dismiss their claim for \$1,400.00.

As to the landlords' claim for \$500.00 for a "damage deposit", the landlords own evidence shows that they collected \$500.00. I am unsure why the landlords included a claim for an amount already collected.

I dismiss this claim.

As to the landlords' claim for \$200.00 for the remainder of the "damage" deposit, I inform the landlords that a security deposit is paid by the tenant at the start of the tenancy and is held in trust for the tenant during the tenancy. It must be dealt with at the end of a tenancy as required by the Act. In this case, not being paid a security deposit for a tenancy that never started does not form a claim for damage or loss, as the security deposit is always held in trust.

I dismiss their claim for \$200.00.

As I have dismissed the landlords' monetary claim, I do not grant them recovery of their filing fee of \$100.00.

In the case before me, I find the undisputed evidence is that the tenant paid no less than \$500.00 as a security deposit. I am unable to determine from the tenant's evidence that she paid \$700.00 as I find that the Ministry of Social Development's form does not prove that \$700.00 was paid. There was no other proof that the tenant paid \$700.00, such as a bank withdrawal in the amount.

As noted above, as I have dismissed the entire landlords' claim of \$2,100.00, pursuant to section 62(3), I order the landlords to return the tenant's security deposit of \$500.00 immediately.

To give effect to this order, pursuant to section 67 of the Act, I grant the tenant a monetary order in the amount of \$500.00, the provable amount of her security deposit paid.

The final, legally binding monetary order is attached with the tenant's Decision. Should the landlords fail to pay the tenant this amount without delay, the order may be served upon the landlords and filed in the Provincial Court of British Columbia (Small Claims) for enforcement purposes. The landlords are advised that costs of such enforcement are recoverable from the landlords.

### Conclusion

The landlords' application is dismissed, without leave to reapply, for the reasons above.

The landlords are ordered to return the tenant's security deposit of \$500.00, immediately, and the tenant is granted a monetary order in the amount of that deposit in the amount of \$500.00 in the event the landlords do not comply with this order.

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: July 23, 2019

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Residential Tenancy Branch