



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNSD, FF

### Introduction

This hearing was convened as the result of the tenants' application for dispute resolution under the Residential Tenancy Act (the "Act"). The tenants applied for an order for the return of their security deposit, a monetary order for their security deposit which has been doubled, and for recovery of the filing fee paid for this application.

The tenants and the landlord attended, the hearing process was explained and they were given an opportunity to ask questions about the hearing process.

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

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

### Preliminary and Procedural Matters

At the outset of the hearing, the landlord confirmed receiving the tenants' evidence and their application seeking to amend their original monetary claim of \$1,200.00.

The landlord submitted evidence, which was received by the Residential Tenancy Branch ("RTB"); however, the tenant said she had not received it. The landlord submitted that she mailed it by regular mail approximately two weeks prior to the hearing.

I have reviewed the landlord's evidence and determined that it would not be prejudicial to the tenants to proceed with the hearing for the reason that there were two pages dealing with the landlord's assertion that the tenants damaged the rental unit during the tenancy. The parties were informed that any matters dealing with damages were not relevant for my considering on the tenants' application and would exclude any reference to alleged damages.

Additionally, the evidence shows that this tenancy ended on May 31, 2017, and the tenants made their application for dispute resolution on May 22, 2019. The tenants filed an application to amend their original application, seeking to increase their monetary claim for loss of quiet enjoyment, on August 1, 2019.

I informed the tenants that I would not accept their request to amend their application to bring forth other issues not related to their primary application for a return of their security deposit. The tenants were required to file their application within 2 years of May 31, 2017, the date the tenancy ended, and I find their amended application was not filed within the required time frame.

The tenants' amended application is dismissed, without leave to reapply.

The hearing proceeded on the tenants' original application.

#### Issue(s) to be Decided

Are the tenants entitled to the return of their security deposit, doubled, and to recovery of the filing fee paid for this application?

#### Background and Evidence

The tenants submitted that this tenancy began on July 2, 2011, ended on May 31, 2017, and that they paid a security deposit of \$600.00 on July 2, 2011.

The tenants submitted that they provided their written forwarding address to the landlord by a letter attached to the rental unit keys returned to the landlord on May 31, 2017.

The tenants submitted that they did not give consent to the landlord to retain any portion of their security deposit.

The tenants submitted that the landlord has not returned any portion of their security deposit, and are therefore entitled to monetary compensation of \$1,200.00, which is their security deposit of \$600.00, doubled.

In response to my inquiry, the tenants said that there had been no move-in or move-out inspection conducted with the landlord and there have been no condition inspection reports ("CIR's").

*Landlord's response-*

The landlord confirmed that the tenancy ended on May 31, 2017, that she collected but has not returned the tenants' security deposit of \$600.00, and that she received the tenants' written forwarding address on May 31, 2017.

The landlord confirmed also that there was not a move-in or move-out inspection with the tenants and there was not a CIR.

The landlord repeatedly attempted to explain why she did not return the tenants' security deposit, which was the aforementioned alleged damage to the rental unit, but I informed the landlord that evidence was not relevant to my decision.

The landlord also confirmed not having made her own application for dispute resolution claiming against the tenants' security deposit.

Analysis

After reviewing the relevant evidence, I provide the following findings, based upon a balance of probabilities:

Under section 38(1) of the Act, at the end of a tenancy, unless the tenant's right to a return of their security deposit has been extinguished, a landlord must either return the tenant's security deposit or to file an application for dispute resolution to retain the security deposit within 15 days of the later of receiving the tenant's forwarding address in writing and the end of the tenancy. If a landlord fails to comply, then the landlord must pay the tenant double the security deposit, pursuant to section 38(6) of the Act.

I do not find that the tenants have extinguished their rights to the return of their security deposit.

In the case before me, the undisputed evidence shows that the tenancy ended and the landlord received the tenants' written forwarding address on May 31, 2017, the landlord has not applied for dispute resolution claiming against the security deposit, and has not returned the tenants' security deposit.

I therefore find the tenants are entitled to a return of their security deposit of \$600.00 and that it must be doubled.

I therefore grant the tenants' application for dispute resolution and order that the landlord pay the tenants double their security deposit.

I also award the tenants recovery of their filing fee of \$100.00.

The tenants are therefore granted a monetary order, pursuant to section 67 of the Act, for \$1,300.00, comprised of their security deposit of \$600.00, doubled to \$1,200.00, and the filing fee of \$100.00.

Should the landlord fail to pay the tenants this amount without delay after being served the order, the monetary order may be filed in the Provincial Court of British Columbia (Small Claims) for enforcement as an Order of that Court. The landlord is advised that costs of such enforcement are recoverable from the landlord.

### Conclusion

The monetary claim in the tenants' original application is granted.

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: September 3, 2019

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Residential Tenancy Branch