



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      CNC, FFT

### Introduction

This hearing dealt with the tenants' application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 47; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

As Tenant DLL (the tenant) confirmed that they received the landlord's 1 Month Notice on September 4, 2019, I find that the tenants were duly served with this Notice in accordance with section 88 of the *Act*. As Landlord JO (the landlord) confirmed that they received a copy of the tenants' dispute resolution hearing package sent by the tenants by registered mail on September 12, 2019, I find that the landlords were duly served with this package in accordance with section 89 of the *Act*.

At the commencement of the hearing, the tenant confirmed that they had vacated the rental unit on September 30, 2019, the effective date to end this tenancy identified on the landlords' 1 Month Notice. Since this tenancy has ended, the tenant withdrew their application to cancel that Notice. The tenants' application to cancel the 1 Month Notice is hereby withdrawn.

The tenant said that they were still seeking a recovery of their filing fee, and also requested the return of their security deposit.

Issues(s) to be Decided

Are the tenants entitled to recover the filing fee for this application from the landlords?

Background and Evidence

Although there was no written tenancy agreement between the parties, the parties agreed that the base monthly rent for this tenancy was set at \$1,300.00, with an additional \$20.00 paid for access to cable television. The tenancy began on June 15, 2019. The landlords continue to hold the tenants' \$650.00 security deposit paid during the first week of June 2019.

Although the tenants have included a forwarding address in information sent to the landlords in association with this application for dispute resolution, the tenant said that they had asked the landlords to return their security deposit to the local Service BC Office where Residential Tenancy Branch (RTB) staff work. The tenant proposed retrieving that cheque from RTB staff at that location.

Analysis

Since the tenants vacated the rental unit in compliance with the effective date identified on the landlord's 1 Month Notice and without a hearing of their application, I do not find that the tenants are entitled to recover their filing fee from the landlords.

I advised the parties that the dispute regarding the return of the tenants' security deposit did not arise until after the tenants vacated the premises. There is no request for a return of the security deposit in the tenants' application and no amendment to their application was issued or served to the landlords. As such, the tenants' oral request at this hearing to obtain a return of their security deposit is not properly before me and the landlords were not given an adequate opportunity to prepare for consideration of this matter at this hearing. For this reason, I am unable to make a finding with respect to this matter.

At the hearing, I noted that the method that the tenants have used to seek a return of their security deposit would not qualify as having provided the landlords with a written request to return their security deposit to either their address or a forwarding address where they could retrieve their security deposit. I advised that they will have to send the landlords a new written request for the return of their security deposit, separate from any application for dispute resolution. The tenants should not identify retrieval of this

deposit from the RTB office as it would inappropriate for the RTB to become directly involved in a matter where the RTB may need to become involved should the landlord not comply with the provisions of the *Act* with respect to the return of this security deposit.

At the hearing, I also noted that since no joint move-in condition inspection report was produced by the landlords at the beginning of this tenancy, the landlords' right to apply to retain the tenants' security deposit was extinguished at that time. I advised that should the landlords fail to return the tenants' security deposit in full within 15 days of receiving the tenants' forwarding address in writing that the tenants may apply for a monetary award of double the value of their security deposit, pursuant to section 38(6) of the *Act*.

### Conclusion

The tenants' application to cancel the 1 Month Notice is withdrawn.

I dismiss the tenants' application for a monetary award for the recovery of their filing fee without leave to reapply.

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: November 15, 2019

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Residential Tenancy Branch