



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding C/O VANAK REALTY  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      FFT, MNSD

### Introduction

This hearing convened as a result of a Tenants' Application for Dispute Resolution, filed on September 6, 2019, wherein the Tenants sought return of their security deposit and pet damage deposit as well as recovery of the filing fee.

The hearing of the Tenants' Application was scheduled for teleconference at 1:30 p.m. on January 9, 2020. Initially only the Tenant, R.C., called into the hearing. At 1:42 p.m. the Landlord's Property Manager, J.L., called into the hearing. Both parties gave affirmed testimony and were provided the opportunity to present their 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 *Residential Tenancy Rules of Procedure*. However, not all details of the parties' submissions and or arguments are reproduced here; further, only the evidence specifically reference by the parties and relevant to the issues and findings in this matter are described in this Decision.

### Preliminary Matter

The address for service indicated on the residential tenancy agreement between the parties was the realty office, V.N., which in turn employed the property manager J.L. The Landlords were noted as M.C. and M.Y.L. on the tenancy agreement and are therefore the proper parties to this dispute. At the hearing before me J.L. confirmed she was employed as the property manager and as agent for the Landlords.

Section 64(3)(c) of the *Residential Tenancy Act* allows me to amend an Application for Dispute Resolution. I therefore amend the Tenant's Application to correctly note the Landlords as M.C. and M.Y.L.

### Issues to be Decided

1. Are the Tenants entitled to return of double their security and pet damage deposit?
2. Should the Tenants recover the filing fee?

### Background and Evidence

A copy of the residential tenancy agreement was provided in evidence and provided that this tenancy was to begin September 1, 2019. The document further provided that monthly rent was payable in the amount of \$2,700.00 and the Tenants paid a security deposit in the amount of \$1,350.00 and a pet damage deposit in the amount of \$1,350.00. The Tenant, R.C. testified that they provided the deposits in August of 2019.

The Tenant stated that they originally viewed the rental property in July of 2019. At that time, the property required significant cleaning and repairs and the Landlord's agent, J.L., assured the Tenants the property would be cleaned and ready to move in by September 2019. The Tenants allege this was a material term of the tenancy.

R.C. stated the plan was to do the move in condition inspection on September 2, 2019 and receive the keys at that time. When the Tenants arrived on September 2, 2019 the rental home was not cleaned, there was significant refuse outside the property, the downstairs toilet was not working, the garage door did not work, there were issues with the gas range, the fridge was not functional, the carpets were not cleaned, and the property was not otherwise ready for occupancy.

The Tenant stated that J.L., told them that they were getting a good deal and should not expect the rental property to be in good condition. J.L. also stated that the property was owned by a holding company and they intended to tear it down within two years.

The Tenant testified that they offered to stay in their current rental while the promised repairs and cleaning were done, yet J.L. informed the Tenants the Landlords would not perform these tasks. Following this the Tenants delivered a letter to the Landlord's

agent alleging the Landlord materially breached the tenancy; a copy of this letter was provided in evidence.

On September 10, 2019 the Tenants requested return of their security deposit and pet damage deposit. The Tenant confirmed the Landlord did not return the deposit, nor did the Landlord make an application for Dispute Resolution.

In response to the Tenant's claim J.L. testified as follows. She confirmed she received \$1,350.00 as a security deposit and \$1,350.00 as a pet damage deposit from the Tenants. She also confirmed she received the Tenants' forwarding address on September 10, 2019. She stated that she did not make an application for dispute resolution as she believed she could do so at the hearing.

### Analysis

The Tenants apply for return of their security and pet damage deposit pursuant to section 38 of the *Residential Tenancy Act* which reads as follows:

#### **Return of security deposit and pet damage deposit**

**38** (1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of

(a) the date the tenancy ends, and

(b) the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one of the following:

(c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;

(d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

(2) Subsection (1) does not apply if the tenant's right to the return of a security deposit or a pet damage deposit has been extinguished under section 24

(1) *[tenant fails to participate in start of tenancy inspection]* or 36 (1) *[tenant fails to participate in end of tenancy inspection]*.

(3) A landlord may retain from a security deposit or a pet damage deposit an amount that

(a) the director has previously ordered the tenant to pay to the landlord, and

(b) at the end of the tenancy remains unpaid.

(4) A landlord may retain an amount from a security deposit or a pet damage deposit if,

(a) at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant, or

(b) after the end of the tenancy, the director orders that the landlord may retain the amount.

(5) The right of a landlord to retain all or part of a security deposit or pet damage deposit under subsection (4) (a) does not apply if the liability of the tenant is in relation to damage and the landlord's right to claim for damage against a security deposit or a pet damage deposit has been extinguished under section 24 (2) [*landlord failure to meet start of tenancy condition report requirements*] or 36 (2) [*landlord failure to meet end of tenancy condition report requirements*].

(6) If a landlord does not comply with subsection (1), the landlord

(a) may not make a claim against the security deposit or any pet damage deposit, and

(b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows.

I accept the Tenants' evidence that they did not agree to the Landlords retaining any portion of their security or pet damage deposit.

I find that the Landlords received the Tenants' forwarding address in writing on September 10, 2019.

The Landlords failed to return the deposit or apply for arbitration, within 15 days of the end of the tenancy or receipt of the forwarding address of the Tenants, as required by section 38(1) of the *Act*.

As noted during the hearing, the Landlords may only keep all or a portion of the security or pet damage deposit through the authority of the *Act*, such as the written agreement of

the Tenants an Order from an Arbitrator. If the Landlords believe they are entitled to monetary compensation from the Tenants, they must either obtain the Tenant's consent to such deductions or make an Application for an Order authorizing them to retain a portion of those deposits.

I find the Landlords breached sections 38 of the *Act* by failing to return the Tenants' deposits or file for Arbitration. As such, and pursuant to section 38(6), the Tenants are entitled to double the deposits paid. As they have been substantially successful with their Application, they are also entitled to recover the filing fee.

I therefore Order, pursuant to sections 38 and 67 of the *Act*, that the Landlords pay the Tenants the sum of **\$5,500.00**, comprised of double the security and pet damage deposit ( $\$1,350.00 + \$1,350.00 = \$2,700.00$ ;  $2 \times \$2,700.00 = \$5,400.00$ ) and the \$100.00 fee for filing this Application.

### Conclusion

The Tenants application for return of double their security and pet damage deposit is granted. In furtherance of this the Tenants are given a formal Monetary Order in the amount of **\$5,500.00**. The Tenants must serve a copy of the Order on the Landlords as soon as possible, and should the Landlords fail to comply with this Order, the Order may be filed in the B.C. Provincial Court (Small Claims Division) and enforced 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: January 10, 2020

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Residential Tenancy Branch