



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes                      MNSD, FFT

### Introduction

This hearing dealt with the tenant's application for dispute resolution under the Residential Tenancy Act (Act) seeking a monetary order for a return of their security deposit and for recovery of the filing fee paid for this application.

The parties appeared, the hearing process was explained and they were given an opportunity to ask questions about the hearing process.

At the outset of the hearing, each party confirmed that they had received the other party's evidence. Neither party raised any issues regarding service of the application or the evidence.

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

I have reviewed all evidence and testimony before me that met the requirements of the Residential Tenancy Branch Rules of Procedure (Rules); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

### Issue(s) to be Decided

Are the tenants entitled to a monetary order for the amount of their security deposit and to recovery of their filing fee?

### Background and Evidence

The tenants submitted that tenant TL began her tenancy in August 2018, and that tenant KL moved in prior to that time. The tenants submitted that the tenancy ended on August 3, 2019.

The undisputed evidence was that each tenant paid a security deposit. TL paid a security deposit of \$600.00 and KL paid a security deposit of \$300.00.

The tenants gave evidence that the landlord was provided their written forwarding address in separate letters dated August 6, 2019. The tenants submitted a copy of each letter and proof of the tracking history, showing the letters were delivered.

The tenants said that the landlord has returned TL's full security deposit of \$600.00, which was in an e-transfer. The landlord's evidence shows the payment was sent on September 25, 2019. The tenants are now requesting that KL's security deposit be returned.

Both parties agree there was not a move-in or move-out condition inspection report (CIR).

*Landlord's response-*

The landlord submitted evidence to show the tenants damaged the rental unit and did not properly clean the rental unit.

The landlord's relevant evidence included, but was not limited to, photos.

Due to the damage by the tenants, the landlord submitted he did not return tenant KL's security deposit.

Analysis

Based on the relevant oral and written evidence, and on a balance of probabilities, I find as follows:

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 is required to either return a 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. (my emphasis)

In the case before me, the undisputed evidence shows that the tenancy ended on August 3, 2019, and that the landlord received the tenants' written forwarding address on a letter dated August 6, 2019. The Act says that unless there is proof to the contrary, documents sent by registered mail or mail are deemed delivered 5 days later. In this case the landlord was deemed to have received the tenants' written forwarding address by August 11, 2019.

I note that the tenants did not type in a complete address on the letter itself; however, I find that the landlord received the tenants' written forwarding address as both envelopes clearly had the full address on the envelope containing each letter.

Due to the above, I find the landlord was obligated to return the tenants' security deposit, in full, or make an application for dispute resolution claiming against the security deposit by August 26, 2019. In contravention of the Act, the landlord made a deduction from the tenants' security deposit before returning a portion on September 25, 2019, without filing an application.

I therefore find the tenants are entitled to a total monetary award of \$1,300.00, comprised of their security deposits of \$900.00, doubled to \$1,800.00, less the amount previously returned to the tenant, or \$600.00, and the filing fee paid for this application of \$100.00, which I have awarded them due to their successful application.

I grant the tenants a monetary order in the amount of \$1,300.00.

Should the landlord fail to pay the tenants this amount without delay, the order may be served upon the landlord and 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 tenants' application for monetary compensation is granted as they are awarded a monetary award in the amount of \$1,300.00 as noted above.

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 15, 2020

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Residential Tenancy Branch