



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNSDS-DR, FFT

### Introduction

This hearing was convened as a result of the Tenants' Application for Dispute Resolution by direct request, made on May 11, 2020 (the "Application") which was adjourned to a participatory hearing. The Tenants applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- an order that the Landlords return all or part of the security deposit; and
- an order granting recovery of the filing fee.

The Tenants and the Landlords attended the hearing at the appointed date and time. At the beginning of the hearing, the parties acknowledged receipt of their respective application package and documentary evidence. No issues were raised with respect to service or receipt of these documents during the hearing. Pursuant to section 71 of the *Act*, I find the above documents were sufficiently served for the purposes of the *Act*.

The parties were given an opportunity to present 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 Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Issues to be Decided

1. Are the Tenants entitled to an order that the Landlords return all or part of the security deposit, pursuant to section 38 of the *Act*?
2. Are the Tenants entitled to an order granting recovery of the filing fee, pursuant to section 72 of the *Act*?

### Background and Evidence

The parties testified and agreed that the tenancy began on December 1, 2018 and ended on March 31, 2020. During the tenancy, the Tenants were required to pay rent in the amount of \$2,100.00 to the Landlords on the first day of each month. The Tenants

paid a security deposit of \$1,000.00 to the Landlords. The Tenants submitted a copy of the tenancy agreement in support of this testimony.

The Tenants stated that they provided their forwarding address to the Landlords via text message on April 4, 2020 and again via email on April 21, 2020. The Tenants stated that they received an e-transfer from the Landlords in the amount of \$600.00 on April 30, 2020. The Tenants stated that the Landlords have retained \$400.00 without the Tenants' consent.

The Landlords responded and confirmed that they received the Tenants' forwarding address on April 4 and 21, 2020. The Landlords stated that they felt entitled to retaining \$400.00 of the Tenants' deposit as they noticed there was some damage caused to the bathroom mirror which had been newly installed prior to the commencement to the tenancy. The Landlords provided pictures of the damage in support. The Landlords confirmed during the hearing that they have not yet made an application for compensation relating to the damage.

The Tenants stated that they feel as though the damage caused to the mirror constitutes normal wear and tear and that they do not agree with the Landlord retaining any portion of their deposit. If successful, the Tenants are also seeking the return of the filing fee paid to make the Application.

### Analysis

Based on the documentary evidence before me for consideration and oral testimony provided during the hearing, and on a balance of probabilities, I find:

Section 38(1) of the *Act* requires a landlord to repay deposits or make a claim against them by filing an application for dispute resolution within 15 days after receiving a tenant's forwarding address in writing or the end of the tenancy, whichever is later. When a landlord fails to comply with section 38(1) of the *Act*, and does not have authority under sections 38(3) or 38(4) of the *Act* to withhold any deposits, section 38(6) stipulates that a tenant is entitled to receive double the amount of the security deposit.

In this case, I accept that the Tenants vacated the rental unit on March 31, 2020 and provided the Landlords with their forwarding address on April 4 and 21, 2020. I accept that the Landlords received the Tenants forwarding address on both of the above-mentioned dates.

As there is no evidence before me that that the Landlords were entitled to retain all or a portion of the security deposit under sections 38(3) or 38(4) of the *Act*, I find pursuant to section 38(1) of the *Act*, that the Landlords had until April 19, 2020 to repay the deposit or make an application for dispute resolution. While the Landlords felt entitled to retaining a portion of the Tenants' deposit for damage to the rental unit, I find that the Landlords needed to submit an Application to do so. In this case, the Landlords failed to

return the full deposit to the Tenants and did not submit an Application to retain the portion of the Tenants deposit.

In light of the above, and pursuant to section 38(6) of the *Act*, I find the Tenants are entitled to an award of double the amount of the security deposit paid to the Landlords, less any amounts already received.

I accept that the Landlords returned \$600.00 of the Tenants security deposit which was received by the Tenants on April 30, 2020. In this case, the Residential Tenancy Branch Policy Guideline #17 requires the arbitrator to double the amount paid as a security deposit ( $\$1,000.00 \times 2 = \$2,000.00$ ), then deduct the amount already returned to the Tenants ( $\$2,000.00 - \$600.00 = \$1,400.00$ ) to determine the amount of the monetary order.

Having been successful, I also find the Tenants are entitled to recover the \$100.00 filing fee paid to make the Application. Pursuant to section 67 of the *Act*, I find the Tenants are entitled to a monetary order in the amount of \$1,500.00.

### Conclusion

The Landlords breached Section 38 of the *Act*. The Tenants are granted a monetary order in the amount of \$1,500.00. The order may be filed in and enforced as an order of the Provincial Court of BC (Small Claims).

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: June 16, 2020

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Residential Tenancy Branch