



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNSD

### Introduction

This hearing dealt with the tenants' application for dispute resolution under the Residential Tenancy Act (Act) for:

- a return of their security deposit.

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

The tenants confirmed receiving the landlords' evidence and that she did not send her evidence to the landlords. As the tenants did not serve their evidence to the landlords, I declined to consider it; however, the tenants provided their affirmed testimony during the hearing.

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

I have reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch Rules of Procedure (Rules). However, not all details of the parties' respective submissions and/or arguments are reproduced here; further, only the evidence specifically referenced by the parties and relevant to the issues and findings in this matter are described in this Decision.

Words utilizing the singular shall also include the plural and vice versa where the context requires.

Issue(s) to be Decided

Are the tenants entitled to a monetary order for the amount of their security deposit?

Background and Evidence

The tenant submitted that the tenancy began officially began on November 1, 2018, although they did not move in until November 4, 2018, that the monthly rent was \$1,500 and they paid a security deposit of \$750.

The landlord said the security deposit paid was \$600.

The tenant said that they vacated the rental unit on April 1, 2020. The landlord confirmed this date.

The tenant testified they provided their forwarding address in a text message on April 23, 2020, and they did not sign over any portion of the deposit.

In response to my inquiry, the tenant said they communicated with the landlords through telephone calls or visits during the tenancy, but after the tenancy ended, they could no longer visit, due to Covid-19, so they sent the forwarding address by text message.

The tenants submitted that the landlord has not returned the security deposit, which caused the application to be filed. The tenants are now requesting that their security deposit be returned.

The landlord, through their agent, confirmed receiving the tenant's forwarding address in a text message on April 23, 2020, that they have not returned any portion of the security deposit, did not have authority to retain any portion of the tenants' security deposit, and have not applied for dispute resolution claiming against the security deposit.

In their evidence, the landlord confirmed there was not a move-in inspection, due to the sudden end of the previous tenancy. They also confirmed that there was not a move-out inspection with the tenants, due to the concerns of Covid-19 at that time in meeting with other people.

The landlord submitted in their evidence that the tenants did not leave the rental unit reasonably clean and had caused damage beyond reasonable wear and tear.

The landlords' evidence included a copy of the written tenancy agreement which showed two figures regarding the amount of the security deposit. Within the box on the form to write in the amount of security deposit, the figure of \$750 was written. Below that box, the figure \$600 was written, in lighter markings.

### 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, a landlord is required to either repay a tenant's security deposit or to file an application for dispute resolution to retain the deposit within 15 days of the later of receiving the tenant's forwarding address in writing or at the end of a tenancy. Section 38(6) of the Act states that if a landlord fails to comply, or follow the requirements of section 38(1), then the landlord must pay the tenant double the amount of her security deposit.

In the case before me, the undisputed evidence shows that the tenancy ended on April 1, 2020, and that the landlord received the tenants' forwarding address in a text message on April 23, 2020.

Section 88 of the Act provides that documents, the written forwarding address in this case, that are required to be served on another party, the landlords in this case, must be given or served in the ways listed in this section of the Act. Text message communication is not an approved method of delivery of those documents under the Act.

Section 71(2)(C) of the Act states that I may order a document not served in accordance with section 88 or 89 is sufficiently given or served for purposes of this Act.

In this case, due to the ongoing concerns of the Covid-19 pandemic at the time in meeting with other people in person and due to the landlord's confirmation they received the tenants' forwarding address in a text message on April 23, 2020, I order that the forwarding address was sufficiently served under the Act.

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 May 8, 2020, 15 days after they received the forwarding address. In

contravention of the Act, the landlords kept the security deposit, without filing an application claiming against it.

Although the tenants did not claim an amount equivalent to double the security deposit on the application, the tenants did not waive the entitlement contained in the Act and I find therefore that the tenants are entitled to return of double the security deposit.

I must also consider the amount of the security deposit, as the tenants submitted the amount paid was \$750 and the landlord said the amount paid was \$600. Neither party provided proof of payment documenting the amount paid. A landlord is allowed under the Act to charge up to one-half the monthly rent as a security deposit, and in this case, the maximum amount allowed is \$750. Within the box on the written tenancy agreement form, the amount of \$750 was written. Outside that box, another figure of \$600 was written; however, there was no mark through the \$750 within the box.

In weighing the evidence, and in considering that the amount of \$750 was written within the box for the amount of the paid security deposit and that a landlord may and does traditionally charge one-half the monthly rent, I find on a balance of probabilities that the tenants paid \$750 as their security deposit.

For the above reasons, I find the tenants have established a monetary claim for a total monetary award of \$1,500, comprised of their security deposit of \$750, doubled to \$1,500.

I grant the tenants a monetary order in the amount of \$1,500.

Should the landlords fail to pay the tenants this amount without delay, the order may be served upon the landlords and filed in the Provincial Court of British Columbia (Small Claims) for enforcement as an Order of that Court.

The landlords are cautioned 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 \$1,500 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: September 4, 2020

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Residential Tenancy Branch