



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNSD, FFT

### Introduction

The tenants applied for the return of their \$2,250.00 security deposit under sections 38 and 67 of the *Residential Tenancy Act* ("Act"). In their cross-application (which I brought forward from a hearing scheduled on May 11, 2021), the landlords applied for compensation for unpaid rent of \$1,125.00 under sections 26 and 67 of the Act, and for compensation related to a damaged carpet for \$941.25, pursuant to section 67 of the Act. Both parties applied for recovery of their application filing fees of \$100.00.

Both parties attended the hearing on January 25, 2021, which was held by teleconference. No issues of service were raised by the parties.

### Issues

1. Are the tenants entitled to the return of their security deposit?
2. Are the landlords entitled to compensation for unpaid rent?
3. Are the landlords entitled to compensation for a damaged carpet?
4. Is either party entitled to recovery of their application filing fees?

### Background and Evidence

I have only reviewed and considered oral and documentary evidence meeting the requirements of the *Rules of Procedure*, to which I was referred, and which was relevant to determining the issues in these applications. Only relevant evidence needed to explain my decision is reproduced below.

The tenancy in this dispute began on April 15, 2019 and ended on July 31, 2020; the tenants moved in on or about May 25, 2019. Monthly rent was \$2,250.00 and the security deposit was \$2,250.00. A copy of the written Residential Tenancy Agreement was submitted into evidence.

The tenants testified that they did not participate in any condition inspection at the start or at the end of the tenancy. The landlords did not dispute this, testifying that they decided not to, given that they were, and are, located in Ontario.

The tenants testified that they provided their forwarding address in writing to the landlords, in person, on August 20, 2020. The landlords did not dispute this. Finally, the tenants testified that they did not provide any written consent for the landlords to retain any of their security deposit.

The landlords seek half of a month's worth of rent owing, in the amount of \$1,125.00. The tenants did not dispute this amount claimed and explained that this amount must have "slipped through the cracks."

In addition, the landlords seek \$941.25 to replace carpet which the tenants allegedly damaged during the tenancy. Though there is no Condition Inspection Report in evidence, the landlords testified that the carpet "was in a very good condition" at the start of the tenancy. Photographs of the carpet along with an estimate were submitted into evidence. In answer to a question I asked of him, the landlord testified that the carpet was probably about six years old before the tenancy began.

In response, the tenants disputed that the carpet was damaged by them, and that they "had no idea of that damage" and "no idea where damage came from."

### Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

#### **A. Tenants' Claim for Security Deposit**

Section 38(1) of the Act states the following regarding what a landlord's obligations are at the end of the tenancy with respect to security and pet damage deposits:

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.

In this dispute, the landlords had the tenants' forwarding address in writing on August 20, 2020. As such, they had (commencing August 21, 2020) until September 4, 2020 in which they were required to either repay the security deposit or make an application for dispute resolution. They did neither. Indeed, the landlords' application was not made until January 6, 2021, well past the fifteen-day deadline.

Taking into consideration all the oral testimony and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the tenants have met the onus of proving their claim for the return of their security deposit.

## **B. Doubling Provision for Security Deposit Return**

Next, regardless of whether an applicant tenant requests it, I must apply section 38(6) of the Act which states the following:

- (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.

Here, because I find that the landlords did not comply with subsection 38(1) of the Act, it follows that the landlords must pay the tenants double the amount of the security deposit, for a total of \$4,500.00, subject to any amount deducted by way of a monetary award to the landlords.

### **C. Tenants' Claim for Application Filing Fee**

Section 72(1) of the Act permits an arbitrator to order payment of a fee under section 59(2)(c) by one party in a dispute to another party. A successful party is generally entitled to recovery of the filing fee. As the tenants were successful in their application, I therefore grant their claim for reimbursement of the \$100.00 filing fee. This amount is added to the above-noted award for a total of \$4,600.00.

### **D. Landlords' Claim for Unpaid Rent**

As the parties did not dispute that the tenants owed the landlords \$1,125.00 in unpaid rent, pursuant to section 67 of the Act, I award the landlords this amount.

### **E. Landlords' Claim for Damage to Carpet**

Section 37(2) of the Act states that when a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean and undamaged except for reasonable wear and tear.

The landlords contend that the tenants damaged the carpet. The tenants dispute this. When two parties to a dispute provide equally reasonable accounts of events or circumstances related to a dispute, the party making the claim has the burden to provide sufficient evidence over and above their testimony to establish their claim. In this case, I find that the landlords have failed to provide any documentary evidence that the tenants damaged the carpet during the tenancy.

Had the landlords completed a Condition Inspection Report at the start and at the end of the tenancy, then I may have had sufficient evidence to find in favour of the landlords. However, there is no such evidence in this dispute.

Taking into consideration all the oral testimony and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the landlords have not met the onus of proving their claim for compensation for the damaged carpet. That aspect of their claim is thus dismissed without leave to reapply.

### **F. Landlords' Claim for Application Filing Fee**

As the landlords were partly successful in their application, I award them a partial award of \$50.00 toward the application filing fee, pursuant to section 72 of the Act.

### **Summary of Awards, Retention of Security Deposit, and Monetary Order**

The tenants are awarded a total of \$4,600.00. The landlords are awarded a total of \$1,175.00, and the landlords are authorized pursuant to section 38(4)(b) of the Act to retain \$1,175.00 from the security deposit.

The difference of \$3,425.00 is granted to the tenants by way of a monetary order. This order, which is issued in conjunction with this decision to the tenants, must be served on the landlords.

### **Conclusion**

I hereby authorize the landlords, pursuant to section 38(4)(b) of the Act, to retain \$1,175.00 of the tenants' security deposit in satisfaction of their claim for unpaid rent. Their remaining claim is dismissed without leave to reapply.

I hereby grant the tenants a monetary order for \$3,425.00, which must be served on the landlords. If the landlords fail to pay the tenants the amount owed, the tenant may file and enforce the order in the Provincial Court of British Columbia (Small Claims Court).

Finally, I hereby order that the hearing scheduled for May 11, 2021 at 1:30 PM be cancelled.

This decision is made on authority delegated to me under section 9.1(1) of the Act.

Dated: January 25, 2021

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Residential Tenancy Branch