



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNSD, FFT

### Introduction

On November 17, 2020, the Tenant submitted an Application for Dispute Resolution under the *Residential Tenancy Act* (the “Act”) requesting the return of the security deposit, and to recover the cost of the filing fee. The matter was set for a participatory hearing via conference call.

Both Landlords and the Tenant attended the hearing and provided affirmed testimony. They were provided the opportunity to present their relevant oral, written and documentary evidence and to make submissions at the hearing. The parties testified that they exchanged the documentary evidence that I have before me.

### Issues to be Decided

Should the Tenant receive a Monetary Order for the return of the security deposit, in accordance with section 38 and 67 of the Act?

Should the Tenant be compensated for the cost of the filing fee, in accordance with section 72 of the Act?

### Background and Evidence

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.

Landlord DB provided testimony about the terms of the tenancy and stated that there had only been an oral agreement to establish the tenancy and that no tenancy agreement had been written or signed. Landlord DB submitted that the month-to-month

tenancy began on July 1, 2019 and that the monthly rent was \$1,350.00. Landlord DB stated that they collected a security deposit of \$675.00 from the man that established the tenancy and suggested that there might not even be a tenancy with the Tenant CJ.

The Tenant responded and said that she and her children moved into the rental unit with her partner (the man that established the tenancy) on June 16, 2019 and acknowledged that there was only an oral agreement about the terms of the tenancy. The Tenant stated that she regularly paid rent to the Landlords and that they knew she lived in the rental unit.

Landlord DB stated there was a move-in condition inspection conducted on June 14, 2019, but that no written report was completed.

Landlord DB testified that a move-out condition inspection was scheduled with the Tenant on November 1, 2020, but that the Tenant did not come into the rental unit and left before Landlord TB could arrive to participate in the inspection.

Landlord DB stated that there had been a damaged door inside the rental unit and that she told the Tenant that they would return no more than \$500.00 of the security deposit to the Tenant. Landlord DB did not complete a move-out inspection report or receive written consent from the Tenant about deductions from the security deposit.

The Tenant testified that there was no move-in inspection and that she did attend the move-out inspection. The Tenant stated that she met both Landlords inside the rental unit but gave them space to do the inspection and then met them outside of the unit at the end of their inspection. The Tenant acknowledged that there had been some damage to an interior door and that she had consented to Landlord DB's oral agreement for the Landlords to keep \$175.00 of the security deposit as compensation for the damaged door, and to return the balance of \$500.00.

The Tenant stated that the terms of the tenancy had historically been agreed to orally and thought that the same would apply to the negotiation regarding the return of the security deposit. The Tenant submitted Messenger communications to demonstrate that she requested the return of the security deposit via e-transfer; the same way the security deposit and rent had been provided to the Landlords. The Messenger communications also indicated that the Landlords were willing to return some of the security deposit to the Tenant via e-transfer, but not \$500.00.

The Tenant testified that although she had an agreement from the Landlords to return her security deposit via e-transfer, they never returned any of it. The Tenant submitted that the Landlords received her forwarding address when she sent them the Notice of Dispute Resolution Proceedings package in November 2020. The Tenant testified that she still has not received any of her security deposit and is requesting that the Landlords be ordered to return the balance that they agreed on, in the amount of \$500.00.

Landlord TB testified that he did attend the move-out inspection with the Tenant but that he left before the negotiations about the security deposit between the Tenant and Landlord DB. Landlord TB stated that the rental unit required cleaning and that he had left to go get cleaning supplies.

Landlord TB originally stated that they did not receive a forwarding address from the Tenant until they asked for it via Messenger in February 2021. When questioned, Landlord TB acknowledged that they had received a forwarding address from the Tenant on the Notice of Dispute Resolution Proceedings package in November 2020. The Landlords stated that they did not return any of the security deposit to the Tenant or apply for dispute resolution.

### Analysis

Section 38 of the Act states that the landlord has fifteen days, from the later of the day the tenancy ends or the date the landlord received the tenant's forwarding address in writing to return the security deposit to the tenant, reach written agreement with the tenant to keep some or all of the security deposit, or make an Application for Dispute Resolution claiming against the deposit. If the landlord does not return or file for Dispute Resolution to retain the deposit within fifteen days and does not have the tenant's agreement to keep the deposit, or other authority under the Act, the landlord must pay the tenant double the amount of the deposit.

When reviewing how this tenancy began, how the Landlords established the terms of the tenancy, and how the parties communicated with each other, I find that the terms were established through oral agreement, that rent was paid via e-transfer and communications were either conducted in-person or via the Messenger platform.

I also noted the Landlords failed to provide a written tenancy agreement and failed to provide written condition inspection reports in relation to this tenancy and in accordance with the Act. I find that, as a result of the Landlords' lack of proper reports and records, Landlord DB was able to suggest that the Tenant was not actually a tenant, that the Tenant did not attend the move-out condition inspection and that the Landlords did not receive the Tenant's forwarding address via the Notice of Dispute Resolution Proceedings package. In these regards, I find that the Tenant was, in fact, a tenant of the Landlords; that Landlord TB corrected Landlord DB and admitted that he was present at the move-out inspection with the Tenant; and, that Landlord TB acknowledged that the Landlords did receive the Tenant's forwarding address in November 2020.

I accept the Tenant's undisputed testimony and evidence that she requested the agreed upon security deposit balance of \$500.00 via Messenger and notified the Landlords of how to return the security deposit, via e-transfer, on November 13, 2020. I also accept

that the Landlords received the Tenant's forwarding address via the Notice of Dispute Resolution Proceedings sent to them in November 2020.

As a result, I find that the Landlords had ample opportunity to return the Tenant's security deposit or apply for dispute resolution prior to the date of this hearing.

I have no evidence before me that the Landlords returned the balance of the security deposit, reached an agreement with the Tenant to keep the sum of the security deposit or made an Application for Dispute Resolution claiming against the deposit within 15 days of receiving the information of how to e-transfer the funds or after receiving the Tenant's forwarding address. For these reasons, I find the Landlords must reimburse the Tenant double the amount of the security deposit, pursuant to section 38 of the Act. In this case, I acknowledge that the Tenant took responsibility for some damage in the amount of \$175.00. Therefore, I find the Landlords must pay the Tenant a total of \$1,175.00, as referenced below.

I find that the Tenant's Application has merit and that the Tenant is entitled to recover the cost of the filing fee for this Application for Dispute Resolution, in the amount of \$100.00, pursuant to section 72 of the Act.

I issue a Monetary Order in the Tenant's favour under the following terms, which allows the Tenant to be reimbursed double the amount of the security deposit, less \$175.00 in damages, and for the filing fee.

Item	Amount
Security Deposit	\$675.00
Plus (double) the security deposit	675.00
Minus Tenant's damages	-175.00
Recovery of filing fee for this Application	100.00
<b>Total Monetary Order</b>	<b>\$1,275.00</b>

### Conclusion

I grant the Tenant a Monetary Order for the amount of \$1,275.00, in accordance with section 38 and 67 of the Act. In the event that the Landlord does not comply with this

Order, it may be served on the Landlord, filed with the Province of British Columbia Small Claims Court 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: March 11, 2021

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Residential Tenancy Branch