



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNSD, FFT

### Introduction

This hearing was convened as a result of the Tenants' Application for Dispute Resolution, made on May 28, 2021 (the "Application"). The Tenants applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

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

The Tenant S.T. and the Landlord attended the hearing at the appointed date and time. At the start of the hearing, the Tenant stated he sent the Notice of Hearing and documentary evidence to the Landlord by Canada Post Registered Mail. The Tenant provided pictures of the envelope which contained the tracking number and was date stamped, confirming the mailing took place on June 16, 2021. The Landlord confirmed his address which was listed on the envelope, however, the Landlord stated that he did not receive the Tenants' Hearing package or documentary evidence. The Landlord stated that he only learned about the hearing on November 15, 2021 after being notified by the Tenancy Branch.

The Landlord stated that he had sufficient time to review the Tenant's Application and to respond to it during the hearing. Pursuant to Sections 89 and 90 of the *Act*, I find that the Landlord is deemed to have been served with the Application and documentary evidence June 21, 2021, the fifth day after their registered mailing. The Landlord served the Tenant with his documentary evidence the day prior the hearing, placing it in the Tenant's mail slot. The Tenant stated that he has since moved and did not notify the Landlord. The Tenant stated that he wished to proceed with the hearing, despite the fact he did not receive the Landlord's documentary evidence.

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 Landlord 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 October 1, 2019 and ended on April 30, 2021. During the tenancy, rent was due in the amount of \$2,100.00 per month. The Tenants paid a security deposit in the amount of \$1,050.00, which the Landlord continues to hold.

The Tenant stated that he served the Landlord with his forwarding address by email on May 8, 2021. The Landlord confirmed receipt on May 8, 2021. The Tenant stated that the Tenants did not consent to the Landlord retaining any portion of their security deposit. The Landlord stated that he felt entitled to keeping the Tenants' deposit as a result of some damage to the rental unit and for breaching the tenancy agreement relating to pets and smoking.

### 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.

These mandatory provisions are intended to discourage landlords from arbitrarily retaining deposits.

In this case, I accept that the Tenants vacated the rental unit on April 30, 2021 and provided the Landlord with a forwarding address by email, which the Landlord confirmed as having received on May 8, 2021. I find the Tenants' forwarding address was sufficiently served pursuant to Section 71 of the *Act*. As there is no evidence before me that the Landlord was entitled to retain any 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 Landlord had until May 23, 2021 to repay the deposit or make an application for dispute resolution. The Landlord did neither.

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 Landlord (\$1,050.00 x 2 = **\$2,100.00**). 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 **\$2,200.00**.

### Conclusion

The Landlord breached Section 38 of the *Act*. The Tenants are granted a monetary order in the amount of \$2,200.00. 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: November 29, 2021

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Residential Tenancy Branch