



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNSDS-DR, FFT

### Introduction

This matter proceeded by way of an *ex parte* Direct Request Proceeding, pursuant to section 38.1 of the *Residential Tenancy Act* (the *Act*), and dealt with an Application for Dispute Resolution by the tenants to obtain monetary compensation for the return of double the security deposit (the deposit) and to recover the filing fee paid for the application.

This decision is written based on the Application for Dispute Resolution, evidence, and submissions provided by the tenants on September 19, 2021.

The tenants submitted a signed Proof of Service Tenant's Notice of Direct Request Proceeding which declares that on September 30, 2021, the tenants sent the landlord the Notice of Dispute Resolution Proceeding - Direct Request by registered mail. The tenants provided a copy of the Canada Post Customer Receipt containing the tracking number to confirm this mailing.

Based on the written submissions of the tenants and in accordance with sections 89 and 90 of the *Act*, I find that the Direct Request Proceeding documents were served on September 30, 2021 and are deemed to have been received by the landlord on October 5, 2021, the fifth day after their registered mailing.

### Issue(s) to be Decided

Are the tenants entitled to monetary compensation for the return of a security deposit pursuant to sections 38 and 67 of the *Act*?

Are the tenants entitled to recover the filing fee for this application pursuant to section 72 of the *Act*?

### Background and Evidence

I have reviewed all written submissions and evidence before me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this decision.

The tenants submitted the following relevant evidentiary material:

- A copy of a residential tenancy agreement which was signed by the landlord and the tenants on August 12, 2020, indicating a monthly rent of \$2,650.00 and a security deposit of \$1,325.00, for a tenancy commencing on September 1, 2020
- A copy of a Tenant's Notice of Forwarding Address for the Return of Security and/or Pet Damage Deposit (the forwarding address) dated July 2, 2021
- A copy of a Proof of Service Tenant Forwarding Address for the Return of Security and/or Pet Damage Deposit form (Proof of Service of the Forwarding Address) which indicates that the forwarding address was sent to the landlord by registered mail at 11:31 am on July 8, 2021
- A copy of a Canada Post Customer Receipt containing the tracking number to confirm the forwarding address was in fact sent to the landlord on July 2, 2021
- A copy of a Canada Post Delivery Confirmation containing the landlord's signature to confirm the forwarding address was successfully delivered to the landlord on July 8, 2021
- A copy of a Tenant's Direct Request Worksheet showing the amount of the deposit paid by the tenants, an authorized deduction of \$613.57 and indicating the tenancy ended on June 29, 2021
- A copy of an e-mail from the tenants to the landlord indicating that the authorized deduction of \$613.57 is comprised of \$357.28 for a control panel, \$201.60 for the manual labor to replace the control panel, and \$54.69 for a BC Hydro charge

### Analysis

Section 38(1) of the *Act* states that the landlord has fifteen days from the end of tenancy and the date they received the forwarding address to either return the deposit(s) in full or make an application for dispute resolution claiming against the deposit(s).

Section 38(6) of the *Act* states that if the landlord does not return the deposit(s) or file a claim against them within the fifteen days, the landlord must pay the tenant double the amount of the deposit(s).

I have reviewed all documentary evidence and I find that the tenants paid a security deposit in the amount of \$1,325.00, as per the tenancy agreement.

I accept the following declarations made by the tenants on the Tenant's Direct Request Worksheet:

- The tenants have not provided consent for the landlord to keep more than \$613.57 of the deposit

- There are no outstanding Monetary Orders against the tenants for this tenancy
- The tenants have not extinguished their right to the deposit in accordance with sections 24(1) and 36(1) of the *Act*.

I accept the tenants' statement on the Tenant's Direct Request Worksheet that the tenancy ended on June 29, 2021.

I find that the forwarding address was served on July 2, 2021, and has been received by the landlord on July 8, 2021, the day the landlord signed for receipt of the registered mail.

I accept the evidence before me that the landlord has failed to return the deposit to the tenants and has not filed an Application for Dispute Resolution requesting to retain the deposit by July 23, 2021, within the fifteen days granted under section 38(1) of the *Act*.

Based on the foregoing, I find that the landlord must pay the tenants double the amount of the security deposit in accordance sections 38(6) of the *Act*.

As the tenants were successful in this application, I find that the tenants are entitled to recover the \$100.00 filing fee paid for this application.

Section 24(2) of the *Act* states that the landlord's right to claim against a security deposit is extinguished if the landlord does not complete the condition inspection report and give the tenant a copy of the report.

In the Tenant's Direct Request Worksheet, the tenants have stated that the landlord only provided one page of the move-in condition inspection report. For this reason, I find the landlord's right to the deposit has been extinguished.

Policy Guideline 17 on Security Deposit and Set off states that when a landlord has extinguished their right to the deposit, the tenant may only authorize deductions for costs not related to damage.

As the landlord's right to the deposit has been extinguished, I find the tenants could not authorize deductions relating to the damaged control panel. As such, I find the only authorized deduction permitted by the legislation is \$54.69 for BC Hydro.

Therefore, I find that the tenants are entitled to a monetary award in the amount of \$2,640.62, calculated as follows:

Item	Amount
Deposit less authorized deduction (\$1,325.00 - \$54.69)	\$1,270.31
Doubling of unauthorized portion	\$1,270.31
Recovery of Filing Fee	\$100.00
<b>Total Monetary Award to Tenants</b>	<b>\$2,640.62</b>

### Conclusion

Pursuant to sections 67 and 72 of the *Act*, I grant the tenants a Monetary Order in the amount of \$2,640.62 for the return of double the security deposit and for the recovery of the filing fee for this application. The tenants are provided with this Order in the above terms and the landlord must be served with **this Order** as soon as possible. Should the landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial 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: November 03, 2021

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Residential Tenancy Branch