



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Properties Ltd, MacDonald Commercial R.E.S.  
Ltd and [tenant name suppressed to protect privacy]

## **DECISION**

### Dispute Codes

For the landlord: MNR-S, MND-S, FF  
For the tenant: MNSD, FF

### Introduction

This hearing was convened as a result of the cross applications of the parties for dispute resolution seeking remedy under the Residential Tenancy Act (Act).

The landlord applied on June 15, 2021, for:

- a monetary order for unpaid rent;
- compensation for alleged damage to the rental unit by the tenant;
- authority to keep the tenant's security deposit and pet damage deposit to use against a monetary award; and
- to recover the cost of the filing fee.

The tenant applied on December 12, 2021, for:

- a return of her security deposit and pet damage deposit; and
- to recover the cost of the filing fee.

The tenant and her agent attended the hearing; however, the landlords did not attend.

The agent stated he served each landlord with the tenant's Application for Dispute Resolution, evidence, and Notice of Hearing (application package). The agent submitted that he served the application package by registered mail to the property manager to the property manager's address listed in their dispute location application.

The agent submitted that he sent the application package by registered mail to the other landlord's address for service on the lease agreement and it was delivered.

The agent stated that on December 18, 2021, he buzzed the property manager from the intercom, and spoke to AK, the agent who was listed in the landlord's application. The agent submitted that he asked to meet AK to serve the application package and was instructed to leave it at the door and she would collect it. The agent submitted that AK would not meet him at the door, and so he left it. The agent submitted that he took a photo of the package at the door, sent it by text message to AK, to which she replied "Thanks". The agent submitted a copy of that text message reply.

I accept the tenant's evidence and order that the tenant's application was sufficiently served under section 71 (2) of the Act to each landlord. The hearing proceeded in the landlords' absence.

The tenant and agent each confirmed they were not recording the hearing.

The tenant and agent were provided the opportunity to present their evidence orally and make submissions.

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 submissions are reproduced here; further, only the evidence specifically referenced and relevant to the issues and findings in this matter are described in this Decision.

#### Preliminary and Procedural Matters-

Rules 7.3 and 7.4 of the Rules of Procedure provides as follows:

##### **7.3 Consequences of not attending the hearing**

If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply.

##### **7.4 Evidence must be presented**

Evidence must be presented by the party who submitted it, or by the party's agent.

If a party or their agent does not attend the hearing to present evidence, any written submissions supplied may or may not be considered.

Accordingly, **in the absence of any evidence or submissions from the landlords at the hearing, I order the landlords' application dismissed, without leave to reapply.**

The hearing proceeded on the tenant's application.

#### Issue(s) to be Decided

Is the tenant entitled to the return of her security deposit, pet damage deposit, remote control fob deposit, and to recovery of the filing fee paid for this application?

#### Background and Evidence

The tenant submitted that this tenancy began on February 1, 2019, ended on March 30, 2021, and that she paid a security deposit of \$1,200 and a pet damage deposit of \$1,200 on January 30, 2019 as well as a remote control fob deposit of \$200. The tenant filed a copy of the written tenancy agreement.

The tenant submitted that she provided her written forwarding address to the landlord on the move-out condition inspection report (Report) on or about June 2, 2021.

The tenant submitted that the landlord has not returned any portion of the security deposit, pet damage deposit, or the remote control fob deposit. The tenant's monetary claim is \$2,600, comprised of the security deposit of \$1,200, the pet damage deposit of \$1,200, and the remote control fob deposit of \$200.

The tenant submitted she did not give consent to the landlords to retain any portion of the deposits.

#### 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, unless the tenant's right to a return of their security deposit has been extinguished by failure to participate in a move-in or move-out

inspection, a landlord must either return a tenant's security deposit and pet damage deposit or make an application for dispute resolution claiming against the deposits within 15 days of the later of receiving the tenant's forwarding address in writing and the end of the tenancy. If a landlord fails to comply, then the landlord may not make a claim and must pay the tenant double the security deposit and pet damage deposit, pursuant to section 38(6) of the Act. I do not find that the tenant has extinguished her rights to the return of her security deposit and pet damage deposit.

In the case before me, the undisputed evidence shows that the tenancy ended on May 30, 2021, and that on June 2, 2021, the landlord received the tenant's written forwarding address on the Report.

Due to the above, I find the landlord was obligated to return the tenant's security deposit and pet damage deposit, in full, or make an application for dispute resolution claiming against the two deposits by June 17, 2021. In this case, the landlords filed an application claiming against the security deposit and pet damage deposit on June 15, 2021.

Although the landlords failed to attend the hearing on their own application or the tenant's application, I find they filed their application within the required time frame.

I, however, have dismissed the landlords' application and further find that the tenant is entitled to a return of her security deposit and pet damage deposit of \$1,200.00 each.

The tenant also provided undisputed evidence that the tenant was charged \$200 for a remote control fob deposit and that this fee has not been returned.

Section 6(1) of the Regulation provides that if a landlord provides a tenant with a key or other access device, the landlord may charge a fee that is

- (a) refundable upon return of the key or access device, and
- (b) no greater than the direct cost of replacing the key or access device.

Upon review of the evidence before me I conclude that the \$200 deposit charged by the landlord for the remote control fob deposit meets the requirements of section 6(1) of the Regulation as being a refundable fee paid by the tenant.

Accordingly, I grant the tenant's application for the return of the remote control fob deposit of \$200.

Due to the above, I therefore find the tenant has established a total monetary claim of \$2,700, comprised of her security deposit of \$1,200, her pet damage deposit of \$1,200, her remote control fob deposit of \$200, and the filing fee paid for this application of \$100, which I have awarded her due to her successful application.

I grant the tenant a monetary order in the amount of \$2,700 and it is included with this Decision.

Should the landlords fail to pay the tenant this amount without delay, the order may be served upon the landlord 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 landlords.

### Conclusion

The tenant's application is granted, and she has been issued a monetary order in the amount of \$2,700, 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*. Pursuant to section 77 of the Act, a decision or an order is final and binding, except as otherwise provided in the Act.

Dated: January 13, 2022

---

Residential Tenancy Branch