



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding 1164298 BC Ltd.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      **MNSDS-DR, FFT**

### Introduction

This hearing, reconvened from an ex parte Direct Request proceeding, dealt with the tenants' application pursuant to the *Residential Tenancy Act* (the "*Act*") for:

- authorization to obtain a return of all or a portion of the security deposit pursuant to section 38;
- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

The landlord did not attend this hearing which lasted approximately 10 minutes. The teleconference line remained open for the duration of the hearing and the Notice of Hearing was confirmed to contain the correct information. The tenants attended and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The tenants were made aware of Residential Tenancy Rule of Procedure 6.11 prohibiting recording dispute resolution hearings and they testified that they were not making any recordings.

The tenants testified that they served the Interim Decision, Notice of Hearing and all evidence on the landlord by registered mail sent on August 27, 2021. The tenants provided a valid Canada Post tracking receipt as evidence of service. Based on the evidence, I find that the landlord is deemed served with the tenants' materials on September 1, 2021, five days after mailing, in accordance with sections 88, 89 and 90 of the *Act*.

Issue(s) to be Decided

Are the tenants entitled to a monetary award as claimed including a return of the deposit for this tenancy and recovery of the filing fees?

Background and Evidence

The tenants provided undisputed evidence regarding the following facts. This tenancy began on September 15, 2020 and ended on June 15, 2021. The monthly rent was \$2,530.00 payable on the first of each month. A security deposit of \$1,265.00 was paid at the start of the tenancy and is still held by the landlord. No condition inspection report was prepared at anytime for this tenancy.

The tenants gave the landlord their forwarding address in writing by a Tenant's Notice of Forwarding Address dated July 15, 2021. The tenants have not authorized the landlord to make any deductions from the security deposit.

Analysis

Section 38 of the *Act* requires the landlord to either return the tenant's security deposit in full or file for dispute resolution for authorization to retain the deposit 15 days after the later of the end of a tenancy or upon receipt of the tenant's forwarding address in writing. If that does not occur, the landlord must pay a monetary award, pursuant to section 38(6)(b) of the *Act*, equivalent to double the value of the security deposit. However, this provision does not apply if the landlord has obtained the tenant's written permission to keep all or a portion of the security deposit as per section 38(4)(a).

I accept the tenants' evidence that they provided their forwarding address to the landlord on July 15, 2021. I accept that the landlord has failed to return the full security deposit for this tenancy. I accept that the tenants have not provided written authorization that the landlord may retain any portion of the deposit.

Furthermore, I accept the evidence that no condition inspection report was prepared at any time during the tenancy. Section 36 of the *Act* provides that the right of a landlord to claim against a security deposit is extinguished if they do not comply with the requirements of section 35 in offering the tenant 2 opportunities for an inspection and completing a condition inspection report.

Based on the evidence before me, I find that the landlord has neither applied for dispute resolution nor returned the tenants' security deposit in full within 15 days of receiving the tenants' forwarding address on July 15, 2021. I accept the tenants' evidence that they have not waived their right to obtain a payment pursuant to section 38 of the *Act* as a result of the landlord's failure to abide by the provisions of that section of the *Act*. Under these circumstances and in accordance with section 38(6) of the *Act*, I find that the tenants are entitled to an \$2,530.00 Monetary Order, double the value of the \$1,265.00 security deposit withheld by the landlord.

As the tenants were successful in their claim they are also entitled to recover the filing fee from the landlord.

### Conclusion

I issue a monetary order in the tenants' favour in the amount of \$2,630.00, representing double the security deposit for this tenancy and the filing fee. 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: February 24, 2022

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Residential Tenancy Branch