



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding 1165085 BC LTD  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      CNR, PSF, FFT, MNDCT, OLC

### Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Tenants on December 08, 2021 (the “Application”). The Tenants applied as follows:

- To dispute a 10 Day Notice to End Tenancy Issued for Unpaid Rent or Utilities (the “Notice”)
- For an order that the Landlord provide services or facilities required by the tenancy agreement or law
- To recover the filing fee

The Tenants filed an Amendment on February 07, 2022, adding the following requests:

- Return of the security and pet damage deposits
- An order that the Landlord comply with the Act, regulation and/or the tenancy agreement

The Tenants appeared at the hearing. Nobody appeared at the hearing for the Landlord. I explained the hearing process to the Tenants who did not have questions when asked. I told the Tenants they are not allowed to record the hearing pursuant to the Rules of Procedure (the “Rules”). The Tenants provided affirmed testimony.

The Tenants advised that they moved out of the rental unit December 31, 2021. Given this, the Tenants withdrew the dispute of the Notice and request for an order that the Landlord provide services or facilities required by the tenancy agreement or law.

In relation to the request for an order that the Landlord comply with the Act, regulation and/or the tenancy agreement, the Tenants explained that they are seeking a decision about not owing monies to the Landlord. I told the Tenants I cannot decide whether the Landlord is owed monies on the Tenant's Application and that they can address this if the Landlord files an Application for Dispute Resolution seeking monies owing. This request is dismissed without leave to re-apply.

The Tenants confirmed the correct name of the Landlord which is reflected in the style of cause.

The Tenants submitted evidence prior to the hearing. The Landlord did not submit evidence. I addressed service of the hearing package and Tenants' evidence.

The Tenants testified that the hearing package and their evidence were sent to the Landlord by registered mail at the address on the Notice and tenancy agreement on December 11, 2021, and Tracking Number 559 relates to this. The Tenants had submitted documentary evidence of service with Tracking Number 559 on it. I looked Tracking Number 559 up on the Canada Post website which shows the package was delivered December 15, 2021. The Tenants testified that the Amendment and further evidence were sent to the Landlord by registered mail at the same address on February 07, 2022, and Tracking Number 032 relates to this. I looked Tracking Number 032 up on the Canada Post website which shows the package was delivered February 10, 2022.

Based on the undisputed testimony of the Tenants, documentary evidence and Canada Post website information, I am satisfied the Landlord was served with the hearing package, Amendment and evidence in accordance with sections 88(c) and 89(1)(c) of the *Residential Tenancy Act* (the "Act"). Based on the Canada Post website information, I find the Landlord received the packages December 15, 2021 and February 10, 2022. I find the Tenants complied with rules 3.1, 3.14 and 4.6 of the Rules in relation to the timing of service.

Given I was satisfied of service, I proceeded with the hearing in the absence of the Landlord. The Tenants were given an opportunity to present relevant evidence and make relevant submissions. I have considered all documentary evidence and oral testimony of the Tenants. I have only referred to the evidence I find relevant in this decision.

### Issues to be Decided

1. Are the Tenants entitled to return of the security and pet damage deposits?
2. Are the Tenants entitled to recover the filing fee?

### Background and Evidence

A written tenancy agreement was submitted; however, it relates to a different rental unit. The Tenants testified as follows. They were supposed to move into the unit noted in the written tenancy agreement; however, it was uninhabitable and so they moved into the unit noted on the Application temporarily. They remained in the unit noted on the Application for the duration of the tenancy and never moved into the unit noted in the written tenancy agreement. They moved into the unit noted on the Application on October 11 or 12, 2021. Rent was \$1,750.00 per month due on the first day of each month. The Tenants paid an \$875.00 security deposit and \$875.00 pet damage deposit.

The Tenants testified that they provided an email address to the Landlord as their forwarding address and referred to a December 31, 2021 text message in evidence. The Tenants stated that they were told by the Landlord and the RTB that it was sufficient to provide an email address.

### Analysis

Section 38 of the *Act* sets out the obligations of a landlord in relation to dealing with security and pet damage deposits held at the end of a tenancy. Section 38(1) states:

38 (1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of

(a) the date the tenancy ends, and

(b) the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one of the following:

(c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;

(d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

Section 39 of the *Act* states:

39 Despite any other provision of this Act, if a tenant does not give a landlord a forwarding address in writing within one year after the end of the tenancy,

(a) the landlord may keep the security deposit or the pet damage deposit, or both, and

(b) the right of the tenant to the return of the security deposit or pet damage deposit is extinguished.

The *Act* requires the Tenants to provide the Landlord a forwarding address in order to receive their security and pet damage deposits back. A forwarding address must be a PO box address or street address, it cannot be an email address. Given this, I find the Tenants have not yet provided the Landlord with a forwarding address in writing and therefore section 38(1) of the *Act* has not been triggered.

Given the Tenants have not yet provided the Landlord with a forwarding address in writing, the Application as it relates to return of the security and pet damage deposits is premature and I dismiss this aspect of the Application with leave to re-apply. This decision does not extend any time limits set out in the *Act*.

I decline to award the Tenants recovery of the filing fee given they have not been successful in the Application and this request is dismissed without leave to re-apply.

### Conclusion

The Application as it relates to return of the security and pet damage deposits is dismissed with leave to re-apply. This decision does not extend any time limits set out in the *Act*.

I decline to award the Tenants recovery of the filing fee and this request is dismissed without leave to re-apply.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Act*.

Dated: March 24, 2022

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Residential Tenancy Branch