



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Code                      MNSD, MNDCT, FFT

### Introduction

This hearing was convened as a result of the Tenants' Application for Dispute Resolution, made on November 23, 2021. The Tenants applied for the following relief, pursuant to the Residential Tenancy Act (the Act):

- an order that the Landlord return the security deposit and/or pet damage deposit;
- a monetary order for money owed or compensation for damage or loss; and
- an order granting recovery of the filing fee.

The Tenants and the Landlord attended the hearing and provided affirmed testimony.

The Tenants testified the Notice of Dispute Resolution Proceeding package was served on the Landlord by registered mail at the end of November 2021. The Landlord acknowledged receipt. No issues were raised with respect to service or receipt of these documents during the hearing. Therefore, I find the Landlord was sufficiently served with these documents for the purposes of the Act, pursuant to section 71 of the Act.

The Landlord submitted documentary evidence to the Residential Tenancy Branch Dispute Management System. Although the evidence was served on the Tenants by registered mail on April 29, 2022, the Tenants asserted it was served with a Notice of Dispute Resolution Proceeding relating to an application made by the Landlord. The file number of the Landlord's application is included above for ease of reference. However, as the Tenants acknowledged receipt of the evidence, and much of which was correspondence between the parties, I find the Tenants were sufficiently served with the Landlord's evidence for the purposes of the Act, pursuant to section 71 of the Act.

The parties were advised that Rule of Procedure 6.11 prohibits the recording of dispute resolution hearings.

The parties were given a full 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, and to which I was referred. 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 granting the return of the security deposit and/or the pet damage deposit?
2. Are the Tenants entitled to a monetary order for money owed or compensation for damage or loss?
3. Are the Tenants entitled to recover the filing fee?

### Background and Evidence

The parties agreed the fixed-term tenancy began on November 15, 2021 and was expected to continue to November 15, 2022. Rent of \$1,700.00 per month was due on the first day of each month. The Tenants paid a security deposit of \$850.00 and a pet damage deposit of \$850.00, which the Landlord holds. A copy of the tenancy agreement, signed on October 24, 2021, was submitted into evidence.

The Tenants testified that they viewed the rental unit in October 2021. After signing the tenancy agreement, they were given keys. However, the Tenants testified they never moved in because of the dirty condition of the rental unit. The Tenants submitted that the condition of the rental unit presented a health and safety hazard for themselves and their 9-month-old baby. The Tenants acknowledged they completed a Condition Inspection Report on November 15, 2021, during which they discussed what needed to be cleaned. However, the cleanliness issues were not recorded on the Condition Inspection Report.

The issues were summarized in correspondence to the Landlord. In an email to the Landlord dated November 17, 2021, the Tenants wrote:

The issues with the rental unit are as follows:

- Unit needs to be free of dust, dirt and debris on surfaces including walls, floors, baseboards, windows, cupboards, counters and any other surfaces inside the dwelling.
- working smoke alarm needs to be installed in the unit according to BC laws.
- light fixtures need to be replaced and in working order

The Landlord agreed with much of the Tenants' characterization of what happened. The Landlord testified that the Condition Inspection Report was completed and did not reference cleanliness. In response, the Tenants testified that when they viewed the rental unit in October 2021, it was still occupied by the previous tenant. As a result, they did not see some of the issues and assumed it would have been cleaned before they moved in.

The Tenants' claims are described in the application. First, the Tenants request the return of double the security deposit and pet damage deposit. They testified the Landlord was provided with a forwarding address in writing in a letter dated November 16, 2021. This letter also advised of the Tenants' intention to end the tenancy, effective immediately. The Tenants testified the letter was sent to the Landlord via registered mail and by email. The keys to the rental unit were included in the registered mailing. A Canada Post registered mail receipt dated November 18, 2021 was submitted in support.

In reply, the Landlord acknowledged receipt of the Tenants' forwarding address by registered mail on November 27, 2021. He testified that the security deposit and pet damage deposit were not returned because the Tenants ended the tenancy when they were not entitled to do so and were responsible for the loss of rental income. The Landlord advised that he has filed a claim to recover losses, which is scheduled to be heard in December 2022. The file number of the related proceeding is included above for ease of reference.

Second, the Tenants request the return of \$850.00 rent paid for the period from November 15 – 30, 2021. The Tenants testified that lack of cleanliness is the basis for this aspect of the claim. The Tenants acknowledged the Condition Inspection Report did not reference cleanliness but testified that these issues were raised during the move-in condition inspection and after the Condition Inspection Report was signed. The Tenants testified the Landlord was very nonchalant about their concerns.

In reply, the Landlord repeated that a tenancy agreement was signed, the Condition Inspection Report was completed, and the Tenants were given the keys. The Landlord testified that the rental unit was suitable for occupation.

Third, the Tenants request \$197.40 for their time spent cleaning the rental unit, plus cleaning supplies. This amount was calculated based on a total of 12 hours spent cleaning the rental unit at a rate of \$15.20 per hour (\$182.40) on November 16, 2021, plus \$15.00 for cleaning supplies. The Tenants submitted an invoice they prepared for this purpose.

In reply, the Landlord testified that rental unit was clean.

Fourth, the Tenants request \$75.00 as reimbursement of a non-refundable registration fee for a daycare located near the rental unit. They testified they returned to their previous accommodation which is more than 50 minutes away by car and that their daughter could not attend. A copy of the registration invoice was submitted into evidence.

In reply, the Landlord testified that he does not feel responsible for the loss of daycare charges.

Fifth, the Tenants request \$12.27 for mail costs associated with the application. The Tenants were advised during the hearing that costs incurred to serve documents are generally not recoverable as there are lower-cost ways to serve documents on another party. The Tenants did not object.

Finally, the Tenants request \$100.00 in recovery of the filing fee.

### Analysis

Based on the affirmed oral testimony and documentary evidence, and on a balance of probabilities, I find:

With respect to the Tenants' claim for the return of the security deposit, section 38(1) of the Act requires a landlord to repay deposits or make an application to keep 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 do one of these two things, section 38(6) of the Act confirms the tenant is entitled to the return of double the amount of the deposits. The language in the Act is mandatory.

In this case, I find the Tenants served a forwarding address on the Landlord by registered mail on November 18, 2021. The Landlord acknowledged receipt of the Tenants' forwarding address on November 27, 2021. However, the Landlord also confirmed the deposits have not been returned to the Tenants and that an application to keep them was not made until April 2022, well after the 15 days provided to do so as set out in section 38(1) of the Act.

Considering the above, I find the Tenants have established an entitlement to recover double the amount of the deposits paid, or \$3,400.00  $((\$850.00 + \$850.00) \times 2)$ . The Tenants are granted a monetary award of \$3,400.00 in recovery of the deposits held.

With respect to the remainder of the Tenants' claims, section 67 of the Act empowers the director to order one party to pay compensation to the other if damage or loss results from a party not complying with the Act, Residential Tenancy Regulation (the Regulation), or a tenancy agreement.

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided for in sections 7 and 67 of the Act. An applicant must prove the following:

1. That the other party violated the Act, the Regulation, and/or the tenancy agreement;

2. That the violation caused the party making the application to incur damages or loss because of the violation;
3. The value of the loss; and
4. That the party making the application did what was reasonable to minimize the damage or loss

In this case, the burden of proof is on the Tenants to prove the existence of the damage or loss, and that it stemmed directly from a violation of the Act, the Regulation, and/or tenancy agreement on the part of the Landlord. Once that has been established, the Tenants must then provide evidence that can verify the value of the loss or damage. Finally, it must be proven that the Tenants did what was reasonable to minimize the damage or losses that were incurred.

With respect to the Tenants' claim for \$850.00 rent paid for the period from November 15 – 30, 2021, section 16 of the Act confirms that the rights and obligations of a landlord and tenant take effect from the date the tenancy agreement is entered into, whether or not the tenant ever occupies the rental unit. In this case, I find the tenancy agreement was entered into on October 24, 2021, the date it was signed by the parties.

Further, section 45 of the Act confirms that a tenant may end a tenancy if the landlord has failed to comply with a material term of the tenancy agreement and has not corrected the situation within a reasonable period after the tenant gives written notice of the failure. In this case, although I accept that the cleanliness of the rental unit did not meet the Tenants' standards, I find there is insufficient evidence before me to conclude the Landlord breached a material term of the tenancy agreement. Indeed, even if I accept that the condition of the rental unit was a breach of a material term of the tenancy agreement – which I do not – I find the Landlord was not given a reasonable period to correct the situation after being given notice. Indeed, based on the evidence to which I was referred, it appears the first written notice of the Tenants' concerns was dated November 16, 2021. The Tenants' notice to end the tenancy immediately was sent to the Landlord by registered mail only two days later on November 18, 2021.

Considering the above, I find the Tenants were not able to end the tenancy due to a breach of a material term of the tenancy agreement and that rent became due on November 15, 2021. The Landlord is entitled to retain the rent paid and may be entitled to recover further losses. This aspect of the Tenants' application is dismissed.

With respect to the Tenants' claim for \$197.40 for the time spent cleaning the rental unit, I find there is insufficient evidence to grant the relief sought. Although I accept that the rental unit was not cleaned to the Tenants' satisfaction, I am not satisfied that the Landlord breached the Act, the Regulation, and/or the tenancy agreement. As already noted above, the Tenants viewed the rental unit before signing the tenancy agreement and completed a Condition Inspection Report which made no reference to the cleanliness of the rental unit. This aspect of the Tenants' application is dismissed.

With respect to the Tenants' claim for \$75.00 as reimbursement of a registration fee for a daycare located near the rental unit, I find I am not satisfied that the loss was incurred due to the Landlord's breach of the Act, the Regulation, and/or the tenancy agreement. I repeat my finding that the Tenants did not have a right to end the fixed term tenancy for breach of a material term of the tenancy agreement. The Tenants could have continued the tenancy and resolved the cleanliness issue with the Landlord. This aspect of the Tenants' application is dismissed.

Fifth, the Tenants request \$12.27 for mail costs associated with the application. The Tenants were advised during the hearing that costs incurred to serve documents are generally not recoverable as there are lower-cost ways to serve documents on another party. The Tenants did not object. This aspect of the Tenants' application is dismissed.

As the Tenants have been partially successful, I find the Tenants are entitled to recover the \$100.00 filing fee paid to make the application.

### Conclusion

The Tenants are granted a monetary order of \$3,500.00 in recovery of double the security and pet damage deposits held (\$3,400.00) and in recovery of the filing fee (\$100.00). The monetary order must be served on the Landlord. The monetary order may be filed in and enforced as an order of the Provincial Court of British Columbia (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: June 15, 2022

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Residential Tenancy Branch