



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      FFT, MNSD, MNDCT

### Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution, made on October 8, 2021 (the "Application"). The Tenant applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- an order that the Landlord return all or part of the security deposit;
- a monetary order for compensation; and
- an order granting recovery of the filing fee.

The hearing was scheduled for 1:30pm on May 26, 2022 as a teleconference hearing. Only the Tenant M.G. and their Advocates appeared at the appointed date and time. No one appeared for the Landlord. The conference call line remained open and was monitored for 13 minutes before the call ended. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. During the hearing, I also confirmed from the online teleconference system that the Tenant, their Advocates, and I were the only persons who had called into this teleconference.

The Tenant testified the Application and documentary evidence package was served on the Landlord by registered mail on October 16, 2021. A copy of the Canada Post registered mail receipt was submitted in support. Based on the oral and written submissions of the Applicant, and in accordance with sections 89 and 90 of the *Act*, I find that the Landlord is deemed to have been served with the Application and documentary evidence on October 21, 2021, the fifth day after their registered mailing.

The Landlord submitted documentary evidence to the Residential Tenancy Branch on May 17, 2022, however, no one attended the hearing for the Landlord to present the evidence for my consideration.

The Tenant and their advocates were given an 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. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Issues to be Decided

1. Is the Tenant entitled to an order that the Landlord return all or part of the security deposit, pursuant to section 38 of the *Act*?
2. Is the Tenant entitled to monetary compensation, pursuant to Section 67 of the *Act*?
3. Is the Tenant entitled to an order granting recovery of the filing fee, pursuant to section 72 of the *Act*?

### Background and Evidence

The Tenant provided the following testimony; the tenancy was established between the Tenants (M.A. and M.G.) and the Landlords (S.P. and M.W.) which commenced on May 1, 2021. The Tenants were required to pay rent in the amount of \$1,550.00 to the Landlords which was due on the first day of each month. The Tenant M.G. stated that she paid a security and pet damage deposit totalling \$1,550.00 to the Landlords.

The Tenant M.G. stated that she did not move into the rental unit due to an incident between the co-tenants. The Tenant M.G. stated that she provided her notice to end tenancy to the Landlords on May 23, 2021 with an effective date of June 30, 2021. The Tenant M.G. stated that she continued to pay rent while not occupying the rental unit up until the end of her tenancy on June 30, 2021. The Tenant M.G. stated that her Co-Tenant M.A. remained in the rental unit. The Tenant provided a copy of the notice as well as rent payment statements in support.

The Tenant M.G. testified that she served the Landlords in person with her forwarding address in writing on July 23, 2021. The Tenant provided a copy of the RTB-47 document and a witnessed proof of service in support. The Tenant M.G. stated that she did not consent to the Landlords retaining the deposits, and that the Landlords have failed to return the Tenant's deposits or make a claim to retain them. As such, the Tenant M.G. is seeking the return of double the amount of his deposit as well as the filing fee paid to make the Application.

As previously noted, no one attended the hearing for the Landlord to respond to the Tenant's Claims.

### Analysis

Based on the uncontested documentary evidence before me for consideration and oral testimony provided during the hearing, and on a balance of probabilities, I find:

Section 38(1) of the *Act* requires a landlord to repay deposits or make a claim against 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 comply with section 38(1) of the *Act*, and does not have authority under sections 38(3) or 38(4) of the *Act* to withhold any deposits, section 38(6) stipulates that a tenant is entitled to receive double the amount of the security deposit. These mandatory provisions are intended to discourage landlords from arbitrarily retaining deposits.

According to the Policy Guideline 13

**B. TENANTS AND CO-TENANTS** A tenant is a person who has entered a tenancy agreement to rent a rental unit or manufactured home site. If there is no written agreement, the person who made an oral agreement with the landlord to rent the rental unit or manufactured home site and pay the rent is the tenant. There may be more than one tenant; co-tenants are two or more tenants who rent the same rental unit or site under the same tenancy agreement. Generally, co-tenants have equal rights under their agreement and are jointly and severally responsible for meeting its terms, unless the tenancy agreement states otherwise. "Jointly and severally" means that all co-tenants are responsible, both as one group and as individuals, for complying with the terms of the tenancy agreement.

**E. ENDING A TENANCY** A tenant can end a tenancy by giving the landlord a written notice. A tenancy may also end if the landlord and any tenant or co-tenant mutually agree in writing to end the tenancy. When a tenancy ends in these circumstances, the notice or agreement to end the tenancy applies to all co-tenants. In a monthly or periodic tenancy, when a tenant serves the landlord with a written notice to end tenancy, the effective date of the notice must be at least one month after the landlord receives the notice and on the day before rent is due. If the tenant gives proper notice to end the tenancy, the tenancy agreement will end on the effective date of that notice and

all tenants must move out, even where the notice has not been signed by all tenants. When a tenant has ended the tenancy by giving written notice, all co-tenants remain responsible for meeting the terms of the tenancy agreement until the effective date of the notice. Co-tenants wishing to remain in the rental unit after a notice to end the tenancy has been given should discuss the situation with the landlord. If the landlord agrees to the tenant staying, the landlord and tenant must enter into a new written tenancy agreement.

If a tenant remains in the rental unit and continues paying rent after the date the notice took effect, the landlord and tenant may have implicitly entered into a new tenancy agreement. The tenant who moved out is not responsible for this new agreement.

F. SECURITY AND PET DAMAGE DEPOSITS A security deposit or a pet damage deposit is paid in respect of a tenancy agreement. Regardless of who paid the deposit, any tenant who is a party to the tenancy agreement to which the deposit applies may agree in writing to allow the landlord to keep all or part of the deposit for unpaid rent or damages, or may apply for dispute resolution for return of the deposit. The landlord may return the deposit(s) plus any applicable interest to any tenant who is named on the tenancy agreement, regardless of who paid the deposit.

In this case, I accept that the Tenant M.G. provided the Landlords with her notice to end tenancy on May 23, 2021, with an effective date of June 30, 2021. As the Tenants are Jointly and severally responsible, I find that the notice to end tenancy applied to both tenants. I find that the tenancy between the parties ended on June 30, 2021. If the co-tenant remained in the rental unit, I find that the co-tenant and the Landlords would have established a new tenancy.

I find that the Tenant M.G. provided sufficient evidence to demonstrate that she served the Landlords in person with her forwarding address on July 23, 2021. In accordance with Section 90 of the *Act*, I find that the Landlord is deemed to have been served with the Tenant's forwarding address on the same date.

As there is no evidence before me that that the Landlord was entitled to retain any portion of the security deposit under sections 38(3) or 38(4) of the *Act*, or that the Landlord returned the deposit to the co-tenant, I find pursuant to section 38(1) of the *Act*, that the Landlords had until August 7, 2021 to repay the deposit or make an application for dispute resolution. The Landlords did neither.

In light of the above, and pursuant to section 38(6) of the *Act*, I find the Tenant M.G. is entitled to an award of double the amount of the security and pet damage deposits paid to the Landlords ( $\$1,550.00 \times 2 = \mathbf{\$3,100.00}$ )

Having been successful, I also find the Tenant M.G. is entitled to recover the **\$100.00** filing fee paid to make the Application.

Pursuant to section 67 of the *Act*, I find the Tenant M.G. is entitled to a monetary order in the amount of **\$3,200.00**.

### Conclusion

The Landlords breached Section 38 of the Act. The Tenant M.G. is granted a monetary order in the amount of \$3,200.00. The order may be filed in and enforced as an order of the Provincial Court of BC (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