



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNRT, MNDCT, MNSD, FFT

### Introduction

This hearing was convened as a result of the Tenants' Application for Dispute Resolution, made on December 12, 2021 (the "Application"). The Tenants 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 emergency repairs;
- a monetary order for damage or compensation; and
- an order granting recovery of the filing fee.

The hearing was scheduled for 1:30pm on July 18, 2022 as a teleconference hearing. Only the Tenants appeared at the appointed date and time. No one appeared for the Landlord. The conference call line remained open and was monitored for 20 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 Tenants and I were the only persons who had called into this teleconference.

The Tenants testified the Application and documentary evidence package was served on the Landlord by registered mail on December 18, 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 December 23, 2021, the fifth day after their registered mailing. The Landlord did not submit any documentary evidence in response to the Application.

The Tenants 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. Are the Tenants entitled to an order that the Landlord return all or part of the security deposit, pursuant to section 38 of the *Act*?
2. Are the Tenants entitled to a monetary order for the cost of emergency repairs, pursuant to Section 33 of the *Act*?
3. Are the Tenants entitled to a monetary order for damage or compensation, pursuant to Section 67 of the *Act*?
4. Are the Tenants entitled to an order granting recovery of the filing fee, pursuant to section 72 of the *Act*?

### Background and Evidence

The Tenants testified that the tenancy began on July 15, 2021 and ended on August 9, 2021. During the tenancy, rent in the amount of \$2,400.00 was due to the Landlord. The Tenants testified that they paid a security deposit of \$1,200.00 which the Landlord continues to hold. The Tenants provided a copy of the tenancy agreement in support.

The Tenants testified that they sent the Landlord their forwarding address in writing by registered mail on August 13, 2021. The Tenants provided a copy of the receipt in support. The Tenants stated that they did not consent to the Landlord deducting any amount of the deposit, and that the Landlord has failed to return the Tenants' security deposit or make a claim to retain it.

The Tenants are claiming \$3,056.00 which represents half of their moving costs. The Tenants stated that the Landlord had assured them that they would have the rental unit cleaned and make several repairs to the rental unit prior to the commencement of the tenancy. The Tenants stated that they moved into the rental unit to find that it still had mold, rodent feces, and generally dirty throughout the rental unit. The Tenants stated that despite their efforts at cleaning and repairing the rental unit themselves, they decided to vacate the rental unit and are claiming for the costs associated with doing so. The Tenants provided a copy of their bank statements showing the payments made to the moving company.

The Tenants are claiming \$952.00 in relation to replacing the pre-existing fridge and stove in the rental unit. The Tenants stated that they did not have use of a functioning fridge and stove at the start of the tenancy. As such, they purchased used appliances and provided a copy of their bank statement in support of the purchase cost.

The Tenants are claiming \$680.00 for cleaning the rental unit at the start of the tenancy. The Tenants stated that the rental unit was unclean and therefore, they employed the services of a cleaner who attended and cleaned the rental unit for 10 hours. The Tenants provided a copy of the cheque in support.

The Tenants are also claiming \$250.00 for purchasing and installing new locks and smoke alarms at the rental unit. The Tenants stated that the locks were broken at the start of the tenancy and that there were no smoke alarms in the rental unit. The Tenants did not provide any evidence in support of these costs.

If successful, the Tenants are seeking the return of the filing fee. As noted, no one attended the hearing for the Landlord.

### Analysis

Based on the 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.

In this case, I accept that the Tenants vacated the rental unit on August 9, 2021 and provided the Landlord with their forwarding address by registered mail on August 13, 2021. In accordance with Section 90 of the *Act*, I find that the Landlord is deemed to have been served with the Tenants' forwarding address on August 18, 2021, the fifth day after the registered mailing.

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, I find pursuant to section 38(1) of the Act, that the Landlord had until September 2, 2021 to repay the deposit or make an application for dispute resolution. The Landlord did neither.

In light of the above, and pursuant to section 38(6) of the Act, I find the Tenants are entitled to an award of double the amount of the security deposit paid to the Landlord (\$1,200.00 x 2 = **\$2,400.00**).

The Tenants are claiming \$3,056.00 which represents half of their moving costs. I find that the Tenants have provided insufficient evidence to demonstrate that they were required to vacate the rental unit as it was unliveable which required them to vacate the rental unit. As such, I dismiss this claim without leave to reapply.

The Tenants are claiming \$952.00 in relation to replacing the pre-existing fridge and stove. I find that the Tenants provided insufficient evidence to demonstrate that the appliances provided with the rental unit were not functioning. I find that the Tenants provided insufficient evidence to demonstrate that they mitigated their loss by notifying the Landlord about the issues with the appliances. Lastly, the Tenants provided insufficient evidence to demonstrate that the appliances require complete replacement rather than repairs. As such, I dismiss this claim without leave to reapply.

The Tenants are claiming \$680.00 for cleaning the rental unit at the start of the tenancy. I find that the Tenants provided no evidence to demonstrate the condition of the rental unit at the start of the tenancy. The Tenants did not provide the cleaning invoice in support. As such, I dismiss this claim without leave to reapply.

The Tenants are also claiming \$250.00 for purchasing and installing new locks and smoke alarms at the rental unit. I find that the Tenants provided insufficient evidence to demonstrate that they mitigated their loss by discussing the issues surrounding the locks and smoke alarm with the Landlord prior to replacing them. Furthermore, the Tenants provided insufficient evidence, such as a receipt, to support the cost of the purchases. As such, I dismiss this claim without leave to reapply.

Having been partially successful, I also find the Tenants are entitled to recover the **\$100.00** filing fee paid to make the Application.

Pursuant to section 67 of the *Act*, I find the Tenants are entitled to a monetary order in the amount of \$2,500.00.

Conclusion

The Landlord breached Section 38 of the *Act*. The Tenants are granted a monetary order in the amount of \$2,500.00. 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: July 18, 2022

---

Residential Tenancy Branch