



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNSDS-DR, FFT

This hearing was convened as a result of the Tenants' Application for Dispute Resolution, made on June 15, 2022. The Tenants initially applied for relief by Direct Request, pursuant to section 38.1 of the Residential Tenancy Act (the Act). However, that matter was adjourned to a participatory hearing which was scheduled on August 29, 2022. However, the matter was adjourned on that date by consent and rescheduled on October 3, 2022. The Tenants apply for:

- an order that the Landlord return the security deposit; and
- an order granting recovery of the filing fee.

MM attended the hearing on behalf of the Tenants. The Landlord attended the hearing on her own behalf. Both MM and the Landlord provided affirmed testimony.

On behalf of the Tenants, MM testified the Notice of Dispute Resolution Proceeding package was served on the Landlord by registered mail on July 22, 2022. The Landlord acknowledged receipt. Pursuant to section 71 of the Act, I find these documents were sufficiently served for the purposes of the Act.

The Landlord testified that documentary evidence in response to the Tenants' application was submitted to Service BC and served on the Tenants. MM acknowledged receipt. However, the documents relied upon by the Landlord were not uploaded to the Residential Tenancy Branch Dispute Management System. The Landlord confirmed she was prepared to proceed without the documents being before me. For the reasons that follow, I find the documents referred to by the Landlord relate to damage to the rental unit and would not impact the outcome. The parties were also reminded that the Tenants bear the burden of proving they are entitled to the relief sought. The hearing proceeded on that basis.



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The parties 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 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 the return of a security deposit?
2. Are the Tenants entitled to recover the filing fee?

## Background and Evidence

The parties agreed the tenancy began on October 1, 2020 and ended on December 31, 2021. Rent of \$1,600.00 per month was due on the first day of each month. The parties agreed the Tenants paid a security deposit of \$800.00, which the Landlord holds.

On behalf of the Tenants, MM testified that the Landlord was provided with a forwarding address in writing that was served on the Landlord by leaving a copy in the Landlord's mailbox on March 21, 2022. In support, the Tenants submitted a copy of a Tenant's Notice of Forwarding Address for the Return of Security and/or Pet Damage Deposit dated March 4, 2022 (the Tenant's Notice). The Tenants also submitted a Proof of Service Tenant Forwarding Address for the Return of Security and/or Pet Damage Deposit.

In reply, the Landlord testified that she does not know when the Tenants' Notice was served but acknowledged receiving it when she returned home from a work trip on March 31, 2022.

The Landlord testified the security deposit has not been returned because of damage to blackout curtains and to the window trim in the rental unit. The Landlord also testified that the Tenants did not vacate the rental property by 1:00 p.m. as agreed but vacated at 3:55 p.m. Further, the Landlord testified that the Tenants left some of their belongings in the shed and that she had to send them a text message on January 31, 2022, asking



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them to remove the items. As a result, the Landlord's new tenants did not have the use of the shed for storage for about a month. Finally, the Landlord suggested the Tenants took her garden hose.

## Analysis

Based on the documentary evidence 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 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. The condition of the rental unit at the end of the tenancy is not a relevant factor when considering a tenant's application for the return of a security deposit.

In this case, I find the Tenants provided the Landlord with a forwarding address by leaving a copy of the Tenant's Notice in the Landlord's mailbox on March 21, 2022. Pursuant to sections 88 and 90 of the Act, documents given in this manner are deemed to be received three days later. Therefore, I find the Landlord is deemed to have received the Tenants' forwarding address on March 24, 2022. As a result, I find the Landlord had 15 days – until April 8, 2022 – to either repay the security deposit to the Tenants or make an application to keep it by filing an application for dispute resolution. However, I find the Landlord has not returned the security deposit to the Tenants and did not make an application for dispute resolution.

Considering the above, I find the Tenants have established an entitlement to recover double the amount of the security deposit paid, or \$1,600.00 (\$800.00 x 2), pursuant to section 38(6) of the Act. I also find the Tenants, having been successful, are entitled to recover the \$100.00 security deposit paid to make the application.



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## Conclusion

The Tenants are granted a monetary order in the amount of \$1,700.00, which is comprised of \$1,600.00 for the return of double the amount of the security deposit and \$100.00 in recovery of the filing fee. The order must be served on the Landlord. The 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: October 3, 2022

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Residential Tenancy Branch