



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes**      **MNDCT MNSD FFT**

### **Introduction**

This hearing was convened by way of conference call in response to the Tenants' application for dispute resolution ("Application") under the *Residential Tenancy Act* (the "Act") in which the Tenants seek:

- an order for the return of all of the security deposit and/or pet deposit pursuant to section 38;
- a monetary order for compensation from the Landlord pursuant to section 57; and
- authorization to recover the filing fee of the Application from the Landlord pursuant to section 72.

The Landlord and the two Tenants ( "IS" and "SB") attended the participatory hearing. The parties were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I informed the parties that the *Residential Tenancy Branch Rules of Procedure* ("RoP") prohibit persons from recording dispute resolution hearings and, if anyone was recording the hearing, to immediately stop recording the proceeding.

IF stated the Tenants served the Notice of Dispute Resolution Proceeding ("NDRP") and their evidence (collectively the "NDRP Package") on the Landlord in-person but she could not recall the date of service. The Landlord acknowledged receipt of the NDRP Package. I find the NDRP Package was served by the Tenants on the Landlord pursuant to the provisions of sections 88 and 89 of the Act.

Preliminary Matter – Non-Service of Evidence on Tenants by Landlord

The Landlord stated she submitted her evidence to the Residential Tenancy Branch (“RTB”) but admitted she did not serve that evidence on the Tenants. Rule 3.15 of the RoP states:

**3.15 Respondent’s evidence provided in single package**

Where possible, copies of all of the respondent’s available evidence should be submitted to the Residential Tenancy Branch online through the Dispute Access Site or directly to the Residential Tenancy Branch Office or through a Service BC Office. The respondent’s evidence should be served on the other party in a single complete package.

The respondent must ensure evidence that the respondent intends to rely on at the hearing is served on the applicant and submitted to the Residential Tenancy Branch as soon as possible. Except for evidence related to an expedited hearing (see Rule 10), and subject to Rule 3.17, *the respondent’s evidence must be received by the applicant and the Residential Tenancy Branch not less than seven days before the hearing.*

See also Rules 3.7 and 3.10.

[emphasis in italics added]

The Landlord did not serve the Tenants with her evidence not less than seven days before the hearing as required by Rule 3.15. As such, the Landlord’s evidence submitted to the RTB is not admissible for the purposes of this hearing.

Issues to be Decided

Are the Tenants entitled to:

- the return of their security deposit?
- an order for compensation from the Landlord?
- recover the filing fee for the Application from the Landlord?

## Background

While I have turned my mind to all the accepted documentary evidence and the testimony of the parties, only the details of the respective submissions and/or arguments relevant to the issues and findings in this matter are reproduced here. The principal aspects of the Application and my findings are set out below.

The Landlord stated the tenancy commenced on September 1, 2021, for a fixed term of one year, with rent of \$1,800.00 payable on the 1<sup>st</sup> day of each month. The Landlord stated the Tenants paid a security deposit of \$900.00 and a pet damage deposit of \$1,100.00. The Landlord stated she was holding the deposits in trust on behalf of the Tenants.

IF stated there was a flood in the rental unit on February 3, 2022 and the water damage throughout the rental unit made it uninhabitable. IF stated the Tenants vacated the rental unit on February 3, 2022. The Landlord acknowledged the floors to the rental unit was wet. The Landlord stated the Tenants vacated on February 11 or 12, 2022. IF stated the Tenants returned to the rental unit on several occasions after February 3, 2022 in order to recover their personal possessions. The Landlord admitted it took 8 months for repairs to be completed on the rental unit. The Landlord stated she did not make an application for dispute resolution to seek an order of possession on the basis that the tenancy had been frustrated.

IF stated the Tenants sent an email to the Landlord on February 2, 2022 in which they provided the Landlord with their forwarding address for the return of their security and pet damage deposits. The Landlord admitted she received the Tenants' email on February 8, 2022. The Landlord admitted she did not make an application for dispute resolution to make any claims against the security and pet damage deposits.

IF stated the Tenants were not given any advance notice the restoration service contractor, hired by the Landlord's insurer, would be entering the rental unit. IF stated the restoration services contractor damaged some of the Tenants' personal property. IF stated that the Tenants made a claim against the Landlords insurer in the BC Civil Resolution Tribunal to recover damages for their loss.

IF stated the Tenants paid \$1,100.00 to the Landlord for February 2022. IF stated the Tenants are seeking a monetary order for the return of \$1,607.00 for unused rent, calculated on the basis of a per diem rental rate of \$64.28 per day for 25 days. The

Landlord stated that she would have recovered the loss of rental income from her insurer if the Tenants had not spoken to the insurer.

### Analysis

#### **1. Tenants' Claim for Return of Security Deposit**

IF stated there was a flood in the rental unit on February 3, 2022 and the water damage throughout the rental unit made it uninhabitable. IF stated the Tenants vacated the rental unit on February 3, 2022. The Landlord stated the Tenants vacated on February 11 or 12, 2022. IF stated the Tenants returned to the rental unit on several occasions after February 3, 2022 in order to recover their personal possessions. The Landlord admitted it took 8 months for repairs to be completed on the rental unit. Although the Tenants returned to the rental unit, I find the rental unit became uninhabitable as a rental unit on February 3, 2022 notwithstanding the Tenants returned to the rental unit until February 11 or 12, 2021 to recover their personal possessions. Section 56.1(2) of the Act states:

- 56.1(2) If the director is satisfied that a rental unit is uninhabitable or the tenancy agreement is otherwise frustrated, the director may make an order
- (a) deeming the tenancy agreement ended on the date the director considers that performance of the tenancy agreement became impossible, and
  - (b) specifying the effective date of the order of possession.

I find that, as a result of a flood in the rental unit, the rental unit was uninhabitable. As such, I deem the tenancy agreement ended on February 3, 2022 as I consider performance of the tenancy agreement became impossible. As the Tenants have vacated the rental unit, it is unnecessary for me to consider whether the Landlord is entitled to an Order of Possession pursuant to section 56(1)(b) of the Act.

Section 38(1) of the Act 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.

The Landlord admitted she received the Tenants' email on February 8, 2022 that provided the Tenants' forwarding address. The Landlord admitted she did not make an application for dispute resolution to make any claims against the security and pet damage deposits.

Section 38(6) of the Act states:

- 38(6) If a landlord does not comply with subsection (1), the landlord
- (a) may not make a claim against the security deposit or any pet damage deposit, and
  - (b) *must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.*

[emphasis in italics added]

As the language of section 38(6) is mandatory, I am required to order the Landlord pay the Tenants an amount equal to double the amount of the security deposit. As such, I order the Landlord to pay the Tenants double the amount of the security and pet damage deposits of \$1,100.00, being a total of \$2,200.00.

## **2. Tenants' Claim for Return of Unused Portion of Rent**

IF stated the Tenants paid the rent for February 2022 of \$1,800.00 for the month of February 2022. IF stated the Tenants were seeking \$1,607.00 for the unused portion of the February 2022 rent.

26(1) A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

The Tenants paid the Landlord \$1,800.00 for rent for the month of February 2022. I have found the tenancy ended on February 3, 2022 due to frustration. I find the Landlord was not entitled to any rent after February 3, 2022. As such, I find the Tenants are entitled to recover the unused portion of the rent at the per diem rate of \$64.28, being \$1,800.00 divided by 28 days. As such, I find the Tenants are entitled to recover \$1,607.00 from the Landlord, calculated as follows:

$$25 \times \$64.28 = \$1,607.00$$

Based on the foregoing, I order the Landlord to pay \$1,607.00.

## **3. Recovery of Tenants' Filing Fee for Application**

As the Tenants have been successful in the Application, I order the Landlord pay the Tenants the \$100.00 filing fee of the Application pursuant to section 72(1) of the Act.

### Conclusion

I order the Landlord pay the Tenants, \$3,907.00, representing the following:

<b>Description</b>	<b>Amount</b>
Return of double the Security and Pet Damages (\$1,100.00 x 2 = \$2,200.00)	\$2,200.00
Reimbursement of Rent for February 4 to 28, 2022:	\$1,607.00
Reimbursement for Tenants' filing fee of the Application	\$100.00
<b>Total</b>	<b>\$3,907.00</b>

This Monetary Order must be served by the Landlord on the Tenant and may be enforced in Provincial Court.

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 11, 2022

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Residential Tenancy Branch