



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNSD, MNDCT

### Introduction

This hearing was convened as a result of the Tenants' Application for Dispute Resolution, made on March 30, 2022. The Tenants applied for the following relief, pursuant to the Residential Tenancy Act (the Act):

- an order that the Landlords return all or part of the security deposit and/or pet damage deposit; and
- a monetary order for money owed or compensation for damage or loss.

The Tenant SG attended the hearing and was accompanied by VH, an advocate. The Landlord attended the hearing on his own behalf. All in attendance provided a solemn affirmation at the beginning of the hearing.

The Tenant testified the Notice of Dispute Resolution Hearing package was served on the Landlord by registered mail on April 7, 2022. The Landlord acknowledged receipt. Therefore, pursuant to section 71 of the Act, I find these documents were sufficiently served for the purposes of the Act.

The Landlord did not submit documentary evidence in response to the application.

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. 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 recover the security deposit?
2. Are the Tenants entitled to a monetary order for money owed or compensation for damage or loss?

### Background and Evidence

The parties confirmed the tenancy began on August 1, 2021 and ended on December 31, 2021. During the tenancy, rent of \$1,600.00 per month was due on the first day of each month. The Tenants paid a security deposit of \$800.00, which the Landlord holds. A copy of the tenancy agreement was submitted into evidence.

The Tenants seek \$1,600.00 for the return of double the amount of the security deposit. Supported by her advocate, SG testified that the Tenants provided the Landlord with a forwarding address in writing in a letter dated March 2, 2022. A copy of the letter was submitted into evidence. SG confirmed the letter was sent to the Landlord by registered mail on March 3, 2022. A copy of a Canada Post registered mail receipt confirming the date and time of purchase and including the tracking number was submitted in support.

In reply, the Landlord acknowledged receipt of the Tenants' forwarding address. However, the Landlord testified that the security deposit was not returned because the Tenants did not return the keys to the rental unit until January 16, 2022, and did not pay any rent in January 2022. In addition, the Landlord testified that the RCMP broke windows when they shot teargas into the rental unit, and that the rental unit needed to be cleaned when the Tenants moved out.

In addition, the Tenants seek \$600.00 for work completed at the request of TL, the property manager. Specifically, SG testified that it was agreed that the Tenants would do sanding, painting and patching holes in walls, and spraying foam around window seals. SG also testified that the Tenants removed a couple of loads of garbage. The amount claimed is based on 30 hours of work at \$20.00 per hour. SG referred to a text message in which TL appears to agree to pay \$40.00 for some work. Other text messages submitted also appear to discuss work to be completed by the Tenants. When asked if there is any evidence of an agreed rate to do the work or an amount of time to be spent, SG stated that the agreement was verbal.

In reply, the Landlord testified that he agreed for the Tenants to patch holes in the walls and paint the damaged area only. The Landlord testified that he expected to pay for 3-4 hours of work and was shocked at the amount claimed.

### Analysis

Based on the documentary evidence and oral testimony provided during the hearing, 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 Landlord was provided with a forwarding address in writing by registered mail on March 3, 2022. Pursuant to sections 88 and 90 of the Act documents served by registered mail are deemed to be received five days later. I find the Landlord, who acknowledged receipt of the letter, is deemed to have received the Tenants' forwarding address in writing on March 8, 2022. As a result, the Landlord had 15 days – until March 23, 2022 – to return the security deposit to the Tenants or make a claim against it by filing an application for dispute resolution. There is no evidence before me that the Landlord did so. Accordingly, pursuant to section 38(6) of the Act, I find the Tenants are entitled to a monetary award for double the amount of the security deposit, or \$1,600.00 (\$800.00 x 2).

With respect to the Tenant's claim for \$600.00 for work completed in the rental unit, 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, regulations 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, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result 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, regulation, 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.

In this case, I find there is insufficient evidence before me to conclude the Tenants are entitled to the relief claimed. Specifically, I find the Tenants were not able to establish the value of the loss as claimed. However, based on text messages submitted by the Tenants and the oral testimony of the Landlord, I find it is more likely than not that the Landlord and the Tenants agreed the Tenants would perform work in the rental unit. The Landlord's evidence, which I accept, is that the work, consisting of patching holes in walls and painting, would take 3-4 hours. Therefore, pursuant to section 62(3) of the Act, I find the Tenants are entitled to recover money owed in the amount of \$80.00 for work completed in the rental unit, which is based on four hours of work at a rate of \$20.00 per hour.

Considering the above, I find the Tenants are entitled to a monetary order in the amount of \$1,680.00, which is comprised of \$1,600.00 for the return of double the amount of the security deposit and \$80.00 as compensation for work completed in the rental unit with the agreement of the Landlord.

Conclusion

The Tenants are granted a monetary order in the amount of \$1,680.00. 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 26, 2022

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Residential Tenancy Branch