



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNSDS-DR, FFT

### Introduction

This hearing was convened as a result of the Tenants' Application for Dispute Resolution made on February 26, 2022. The application was first made by Direct Request Proceeding, pursuant to section 55(4) of the Residential Tenancy Act (the Act). However, in an Interim Decision dated April 19, 2022, an adjudicator ordered that the matter proceed by way of a participatory hearing.

The Tenants applied for the following relief, pursuant to the Act:

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

The Tenants and the Landlord attended the hearing and provided affirmed testimony.

On behalf of the Tenants, YG testified the Notice of Dispute Resolution Proceeding package was served on the Landlord by email and by registered mail. The Landlord acknowledged receipt. Further, the Landlord testified that documentary evidence upon which he intended to rely was served on the Tenants by email. The Tenants acknowledged receipt. No issues were raised with respect to service or receipt of these documents during the hearing. The parties were in attendance and were prepared to proceed. Therefore, pursuant to section 71 of the Act, I find the above documents were sufficiently served for the purposes of the Act.

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 December 6, 2020, and ended on January 31, 2022. Rent of \$2,075.00 per month was due during the tenancy. The parties agreed the Tenants paid a security deposit of \$1,050.00, which the Landlord holds. A copy of the signed tenancy agreement was submitted into evidence.

On behalf of the Tenants, YG testified that the Tenants provided the Landlord with a forwarding address by registered mail and by email on February 1, 2022. A copy of a letter dated January 31, 2022, was submitted into evidence.

In addition, YG testified that the Tenants' forwarding address was subsequently provided to the Landlord by registered mail on March 11, 2022. A copy of a letter dated March 11, 2022, was submitted into evidence. Service in this manner was supported by a Proof of Service documents. Also submitted in support were copies of Canada Post registered mail receipts confirming the date and time of purchase and including a tracking number. Further, the Tenants also submitted a photograph showing an envelope addressed to the Landlord and bearing a registered mail label.

The Landlord testified he could not recall the date the Tenant's forwarding address was received but acknowledged it was received in March 2022. The Landlord testified the security deposit has not been returned to the Tenants because the rental unit was not cleaned. The Landlord referred to windows, the washroom, the kitchen, and a living room wall repair. The Landlord testified that he contacted the Tenants to do a move-out condition inspection but that they would not come. The Landlord testified the cost to

clear the rental unit was \$850.00. The Landlord testified the Tenants also owe \$572.72 for unpaid utilities.

The Landlord also confirmed he has not made an application for dispute resolution in relation to the rental unit.

### 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 consideration when determining a tenant's entitlement to the return of a security deposit.

In this case, I find the Tenants provided the Landlord with a forwarding address in writing by registered mail on March 11, 2022. The Landlord acknowledged receipt of the Tenants' forwarding address in March 2022 but was unable to recall the date. Pursuant to sections 88 and 90 of the Act, documents given in this manner are deemed to be received five days later. Therefore, I find the Landlord is deemed to have received the Tenants' forwarding address on March 16, 2022. Therefore, pursuant to section 38(1) of the Act, I find the Landlord had until March 31, 2022, to either repay the security deposit or make an application to keep it by filing an application for dispute resolution. The Landlord acknowledged he did neither.

Further, I find there is insufficient evidence before me that the Tenants extinguished their right to the return of the security deposit.

Considering the above, and pursuant to section 38(6) of the Act, I find the Tenants have established an entitlement to recover double the amount of the security deposit, or \$2,100.00 (\$1,050.00 x 2). Having been successful, I also find the Tenants are entitled to recover the \$100.00 filing fee paid to make the application.

Pursuant to sections 38 and 67 of the Act, I find the Tenants are entitled to a monetary order of \$2,200.00, which is comprised of \$2,100.00 for double the security deposit and \$100.00 in recovery of the filing fee.

Conclusion

The Tenants are granted a monetary order in the amount of \$2,200.00. 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: November 1, 2022

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Residential Tenancy Branch