



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes**      **MNSDS-DR, FFT**

### **Introduction**

This hearing dealt with an application by the tenants pursuant to the Residential Tenancy Act (“the Act”) for orders as follows:

- For an order returning the security deposit
- For reimbursement of the filing fee pursuant to section 72 of the Act

Tenants MA and CSM appeared. The landlord did not appear. All parties were given a full opportunity to be heard, to present testimony, to make submissions, and to call witnesses.

Both parties confirmed they were not recording the hearing pursuant to RTB Rules of Procedure 6.11. The parties were affirmed.

The matter was adjourned from a direct request hearing to a participatory hearing as the tenants were unable to provide all of the pages of the tenancy agreement.

The tenants stated that they served the landlord with the dispute notice and evidence package by registered mail on November 24, 2022. They provided a receipt from Canada Post with a tracking number in evidence. I find that the landlord is deemed to have been served with the dispute notice and evidence package on November 29, 2022 pursuant to sections 88, 89, and 90 of the Act.

### **Issue(s) to be Decided**

1. Are the tenants entitled to an order for the return of the security deposit?
2. Are the tenants entitled to recover the filing fee for this application?

### Background and Evidence

The tenants provided a copy of the tenancy agreement in evidence. The tenancy commenced November 1, 2020. Rent was \$1,875.00 per month and the landlord holds a security deposit in the amount of \$1,875.00. The tenants vacated the rental unit on September 30, 2022.

The tenants stated that a move in condition inspection report (CIR) was completed upon the tenants' taking possession of the rental unit. A copy of the move in CIR was provided in evidence.

The tenants stated that they also completed a move out CIR when they vacated the rental unit. The move out CIR was completed with both the landlords and tenants present. The tenants signed the move out CIR on September 29, 2022. At that time the tenants agreed to the landlord retaining \$575.00 from the damage deposit, comprised of \$400.00 for cleaning and \$175.00 for painting. The tenants provided a copy of the move out CIR in evidence.

The tenants stated that on November 3, 2022, the landlord contacted them and advised them that he had completed a second inspection of the rental unit and was going to retain the tenants' entire security deposit of \$1,875.00. He provided the tenants with an amended move out CIR. The tenants were not present for the second inspection and did not sign the amended move out CIR. A copy of the amended move out CIR was provided in evidence.

The tenants disagree with the amended move out CIR and are seeking the return of their security deposit.

### Analysis

Pursuant to sections 24 and 36 of the *Act*, landlords and tenants can extinguish their rights in relation to security and pet damage deposits if they do not comply with the *Act* and *Residential Tenancy Regulation* (the "*Regulations*"). Further, section 38 of the *Act* sets out specific requirements for dealing with security and pet damage deposits at the end of a tenancy.

Based on the undisputed testimony of the tenants, I find the tenants provided their forwarding address to the landlord on the move out CIR dated October 30, 2022.

Pursuant to section 38(1) of the *Act*, the landlord had 15 days from October 30, 2022, to repay the security and pet damage deposits or file a claim against them. I find based on the testimony of the tenants, that the landlord did not return their security deposit within 15 days. There is no evidence that the landlord has filed a claim against the security deposit.

Under section 38(6), if the landlord does not return the security deposit or file a claim within the legislated time period, the landlord must pay the tenant double the security deposit, pet deposit or both.

I find that the landlord has not returned the security deposit nor filed a claim against the security deposit within 15 days of receiving the tenants' forwarding address. Therefore, the tenant is entitled to the return of double the amount of the security deposit, less the \$575.00 that the tenant agreed in writing could be retained.

As the tenants were successful in their application, they are also entitled to recover the \$100.00 filing fee.

The tenant is entitled to a monetary order in the amount of \$3,275.00

### Conclusion

The tenants are granted a monetary order for \$3,275.00 as follows:

Return of double the security deposit	\$3,750.00
Less agreed to fee	(\$575.00)
Filing fee	\$100.00
<b>Total</b>	<b>\$3,275.00</b>

The monetary order must be served on the tenant. The monetary 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: January 17, 2023

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Residential Tenancy Branch