



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDCT, RR, MNSDS-DR

### Introduction

This hearing was scheduled to convene at 1:30 p.m. on February 2, 2023 concerning an application made by the tenant seeking a monetary order for money owed or compensation for damage or loss under the *Residential Tenancy Act*, regulation or tenancy agreement; an order reducing rent for repairs, services or facilities agreed upon but not provided; and for a monetary order for return of all or part or double the amount of the security deposit or pet damage deposit.

The tenant attended the hearing, gave affirmed testimony and provided evidentiary material in advance of the hearing. However, the line remained open while the telephone system was monitored for 10 minutes prior to hearing any testimony and no one for the landlords joined the call.

The tenant testified that the landlords were individually served with the Notice of Dispute Resolution Proceeding and evidence by registered mail on September 3, 2022 and has provided a Canada Post cash register receipt bearing that date. The *Residential Tenancy Act* specifies that service by registered mail is deemed to have been served 5 days later, and I find that the landlords have been served in accordance with the *Residential Tenancy Act*.

All evidence of the tenant has been reviewed and is considered in this Decision.

### Issue(s) to be Decided

- Has the tenant established a monetary claim against the landlords for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and more specifically for hotel stays, registered mail and compensation for the landlords' failure to accomplish the stated purpose for ending the tenancy?

- Has the tenant established that rent should be reduced for repairs, services or facilities agreed upon but not provided?
- Has the tenant established a monetary claim as against the landlords for return of all or part or double the amount of the security deposit?

### Background and Evidence

The tenant testified that this month-to-month tenancy began on August 1, 2021 and ended on July 1, 2022. There is no written tenancy agreement, however the tenant testified that rent in the amount of \$1,350.00 was payable on the 1<sup>st</sup> day of each month and there are no rental arrears. Rent receipts have also been provided for this hearing. At the outset of the tenancy the landlords collected a security deposit from the tenant in the amount of \$675.00 which is still held in trust by the landlords, and no pet damage deposit was collected. The rental unit is one of 2 basement suites and the landlords reside in the upper level of the home.

The tenant further testified that the landlord verbally told the tenant to move out because their child would be occupying the rental unit. The tenant was given a Mutual Agreement to End Tenancy to sign, which the parties signed, while the landlord dangled a reference letter in front of the tenant. A copy of the Mutual Agreement to End Tenancy has also been provided for this hearing, which contains an effective date of vacancy of June 30, 2022 at 1:00 p.m. The tenant vacated in accordance with the agreement and was presented with a letter of reference dated May 31, 2022.

The tenant provided the landlords with a forwarding address in writing on July 1, 2022 and was counting on the landlords to return the security deposit so the tenant could pay for another rental. However, the landlords did not return it and the tenant was required to stay in a hotel. A copy of the hotel receipt in the amount of \$579.66 has been provided for this hearing. The tenant had arranged for another rental, but since the landlords didn't return the security deposit, the tenant had to continue searching. The tenant also claims double the amount of the security deposit. The landlords have not served the tenant with an Application for Dispute Resolution claiming against the security deposit.

The tenant also claims \$1,350.00 as compensation required for vacating a rental unit for the landlords' close family member, and testified that the landlords re-rented the rental unit the same day the tenant vacated. The tenant also claims 12 times the monthly rent for the landlords' failure to accomplish that stated purpose.

The tenant also testified that from October, 2021 through June 30, 2022 there was an overhead range vent, but when the tenant cooked, the tenant would be pestered by the landlords because there was no return air supply and the fire alarm would sound. The tenant claims \$50.00 per month for 9 months of not being able to properly use the stove, or \$450.00.

The tenant also testified that the landlords claimed that they knew what they were doing and had been doing it for years. The tenant asked about a condition inspection report at the beginning of the tenancy, but the landlords shrugged it off. The tenant raised a concern about that, and the landlords replied in a manner that was not expressly threatening, but done in a manner to weaponize the *Act* against the tenant, with body language and posturing and what the tenant perceived to be an aggressive manner, causing the tenant duress.

The tenant also claims \$50.00 for 4 registered mail parcels.

### Analysis

Firstly, the tenant is not entitled to compensation for the landlords ending the tenancy for a family member or for failing to accomplish that stated purpose because the landlords did not serve the tenant with a Two Month Notice to End Tenancy for Landlord's Use of Property. I find that the tenant could have refused to move out. However, the law states that if a landlord fails to complete a move-in and move-out condition inspection report in accordance with the regulations, the landlord's right to claim against the security deposit or a pet damage deposit is extinguished. I accept the undisputed testimony of the tenant that the landlords failed to do so, and I find that the landlords' right to make a claim against the security deposit for damages is extinguished.

The *Residential Tenancy Act* requires a landlord to return a security deposit and/or pet damage deposit to a tenant in full within 15 days of the later of the date the tenancy ends or the date the landlord receives the tenant's forwarding address in writing, or must make an Application for Dispute Resolution claiming against the security deposit and/or pet damage deposit within that 15 day period. If the landlord fails to do either, the landlord must repay double the amount(s). In this case, I accept the undisputed testimony of the tenant that the landlords received the tenant's forwarding address in writing on July 1, 2022 but did not return the security deposit. The tenant also testified that the landlords have not served the tenant with an application claiming against the

security deposit, and I have no such application before me. Therefore, I find that the landlords must repay the tenant double the amount, or **\$1,350.00**.

I also accept the undisputed testimony of the tenant that the tenant had made arrangements for another unit but was counting on return of the security deposit, which didn't happen; the landlord required the tenant to sign a Mutual Agreement to End Tenancy and the tenant had to stay in a hotel. I find that the tenant has established a claim for the hotel stay of **\$579.66**.

I also accept the undisputed testimony of the tenant that the tenant could not properly use the stove in the rental unit due to the lack of a return air supply, and the tenant is entitled to recovery of the claimed **\$450.00** for loss of use of a service or facility.

The *Act* provides for recovery of a filing fee, but not for costs associated with serving documents or preparing for a hearing. Therefore, I decline to order that the tenant recover the \$50.00 claim for registered mail.

Having found that the tenant is entitled to \$579.66 for the hotel stay, \$1,350.00 for double the security deposit, and \$450.00 for loss of use of the stove, I grant a monetary order in favour of the tenant as against the landlords in the amount of **\$2,379.66**. The landlords must be served with the monetary order, which may be filed in the Provincial Court of British Columbia, Small Claims division and enforced as a judgment.

### Conclusion

For the reasons set out above, I hereby grant a monetary order in favour of the tenant as against the landlords pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$2,379.66. This order is final and binding and may be enforced.

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: February 02, 2023

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Residential Tenancy Branch