



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

## **DECISION**

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

### **Introduction**

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

- For an order returning the security deposit pursuant to section 38 of the Act
- For reimbursement of the filing fee pursuant to section 72 of the Act

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

The hearing was conducted by conference call. The parties were reminded to not record the hearing pursuant to Rule of Procedure 6.11. The parties were affirmed.

The tenant testified that they served their dispute notice and materials on the landlord by email pursuant to an order for substitutional service. The tenants provided a copy of the sent email in evidence as proof of service and based on their testimonies I find the landlord served in accordance with sections 88, 89 and 90 of the Act.

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

1. Are the tenants entitled to a monetary order for the return of security or pet deposits?
2. Are the tenants entitled to recover the filing fee for this application?

### Background and Evidence

The tenancy commenced on May 1, 2019. Rent was \$1,800.00 per month due on the first of the month. The landlords still hold a security deposit of \$900.00 and a pet deposit of \$900.00. The tenancy ended on September 1, 2022.

The tenants testified that no move in or move out condition inspection was completed with the landlord. The tenants further stated that they provided the landlord with their forwarding address by email on September 27, 2022 and that the landlord replied by text later that day thanking the tenants for their forwarding address.

The tenants testified that they agreed to allowing the landlord to retain \$157.50 of their security deposit for plumbing repairs. The tenants stated that the landlord returned their entire pet deposit and \$400.00 of their security deposit. The tenants did not agree to allow the landlord to retain \$250.00 of their security deposit.

### Analysis

RTB Rules of Procedure 6.6 states, "The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim. In this case the onus is on the tenants.

The pet deposit is not in issue as it has been returned in its entirety to the tenants.

I find that the tenants did not extinguish their rights under either section 24 or 36 of the Act to claim for the return of their security deposit. The tenants agreed to allow the landlord to withhold \$157.50 of their security deposit. However the landlord withheld \$250.00 of the tenants' security deposit.

Section 38(1) of the Act states that upon receiving the tenants' forwarding address the landlord must either return the security and pet deposits or file for dispute resolution and make a claim to retain all or part of the deposits. This is subject to section 38(4) of the Act which allows the landlord to retain an amount of the security deposit agreed to in writing by the tenants.

The tenants in this case agreed to allow the landlord to retain \$157.50 of their security deposit. The landlord therefore was required to return \$492.50 to the tenants within 15 days of receiving their forwarding address, or else file a dispute application. The

landlord returned \$400.00. I have no evidence showing that the landlord has filed a claim against the security deposit.

Section 38(6) of the Act states that if the landlord does not comply with section 38(1) of the Act, the landlord must return double the amount of the security deposit. While the landlord did return \$400.00, RTB Policy Guideline 17 gives the following example of how section 38(6) of the Act is to be applied in this situation:

Example C: A tenant paid \$400 as a security deposit. The tenant agreed in writing to allow the landlord to retain \$100. The landlord returned \$250 within 15 days of receiving the tenant's forwarding address in writing. The landlord retained \$50 without written authorization. The arbitrator doubles the amount that remained after the reduction authorized by the tenant, less the amount actually returned to the tenant. In this example, the amount of the monetary order is \$350 ( $\$400 - \$100 = \$300 \times 2 = \$600$  less amount actually returned \$250)

The landlord should have returned \$492.50 to the tenants. That amount is therefore doubled based on section 38(6) of the Act to \$985.00. As the landlord has returned \$400.00, the tenants are entitled to receive \$585.00 in compensation ( $\$985.00 - \$400.00 = \$585.00$ ).

The tenants' application for return of their security deposit is granted. As the tenants were successful in their application, they are also entitled to recover the \$100.00 filing fee for the application.

### Conclusion

The tenants are granted a monetary order in the amount of \$685.00 for their security deposit and the filing fee. The monetary order must be served on the landlord. 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: May 09, 2023