



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      **MNDL-S, FFL**

### Introduction

This hearing dealt with the Landlords' Application for Dispute Resolution, made on March 9, 2023 (the "Application"). The Landlords applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- a monetary order for damage or loss;
- an order to retain the security deposit; and
- an order granting recovery of the filing fee.

The Landlord, the Landlord's Agent, and the Tenant attended the hearing at the appointed date and time. At the start of the hearing, the Landlord stated that they served the Tenant with the Notice of Hearing and evidence by Canada Post Registered Mail on March 12, 2023. The Landlord submitted a copy of the Registered Mail Receipt in support. The Tenant stated that they did not receive the above-mentioned documents.

The parties agreed that the Tenant provided the Landlord with an address on March 4, 2023. The Tenant stated that they moved from their address between March 4, 2023 and the date the Landlords served the Tenant on March 12, 2023. I find that the Tenant is deemed to have been served with the Notice of Hearing and documentary evidence five days later, on March 17, 2023, pursuant to Section 89 and 90 of the *Act*.

The Tenant stated that they submitted some evidence to the Tenancy Branch, however, had not served a copy of the Landlord.

### Preliminary Matters

Section 88 of the Act stipulates that documents such as evidence must be given or served in one of the following ways:

- (a) by leaving a copy with the person;
- (b) if the person is a landlord, by leaving a copy with an agent of the landlord;
- (c) by sending a copy by ordinary mail or registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;
- (d) if the person is a tenant, by sending a copy by ordinary mail or registered mail to a forwarding address provided by the tenant;
- (e) by leaving a copy at the person's residence with an adult who apparently resides with the person;
- (f) by leaving a copy in a mailbox or mail slot for the address at which the person resides or, if the person is a landlord, for the address at which the person carries on business as a landlord;
- (g) by attaching a copy to a door or other conspicuous place at the address at which the person resides or, if the person is a landlord, at the address at which the person carries on business as a landlord;
- (h) by transmitting a copy to a fax number provided as an address for service by the person to be served; or
- (i) as ordered by an Arbitrator

3.15 Respondent's evidence provided in single package Where possible, copies of all of the respondent's available evidence should be submitted to the Residential Tenancy Branch online through the Dispute Access Site or directly to the Residential Tenancy Branch Office or through a Service BC Office. The respondent's evidence should be served on the other party in a single complete package.

The respondent must ensure evidence that the respondent intends to rely on at the hearing is served on the applicant and submitted to the Residential Tenancy Branch as soon as possible. Except for evidence related to an expedited hearing (see Rule 10), and subject to Rule 3.17, the respondent's evidence must be received by the applicant and the Residential Tenancy Branch **not less than seven days before the hearing**.

3.16 Respondent's proof of service at the hearing, the respondent must be prepared to demonstrate to the satisfaction of the arbitrator that each applicant was served with all their evidence as required by the Act and these Rules of Procedure.

As the Tenant did not serve their evidence to the Landlord, I find that the Tenant's evidence will not be considered in this decision.

The parties were provided with a full 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 Landlords entitled to a monetary order for damage to the rental unit, pursuant to Section 67 of the *Act*?
2. Are the Landlords entitled to retaining the security deposit, pursuant to Section 38, and 72 of the *Act*?
3. Are the Landlords entitled to an order granting recovery of the filing fee, pursuant to Section 72 of the *Act*?

### Background and Evidence

The parties testified and agreed to the following; the tenancy began on September 30, 2021. During the tenancy, the Tenant was required to pay rent in the amount of \$1,275.00 which was due on the first day of each month. The Tenant paid a security deposit in the amount of \$637.00 which the Landlords continue to hold. The Tenancy ended on January 7, 2023.

The Landlords are seeking monetary compensation in the amount of \$1,000.00, to retain the Tenant's security deposit, and for the return of the filing fee. At the start of the hearing, the Landlord stated that they did not provide a monetary order worksheet to demonstrate how they arrived to their \$1,000.00 claim. The Landlord stated that they provided several receipt and quotes instead.

### Analysis

Based on the affirmed oral testimony and documentary evidence, and on a balance of probabilities, I find:

Section 67 of the *Act* empowers me 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 Landlord 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 Tenant. Once that has been established, the Landlord must then provide evidence that can verify the value of the loss or damage. Finally, it must be proven that the Landlord did what was reasonable to minimize the damage or losses that were incurred.

According to Section 59 (2) An application for dispute resolution must;

- (a) be in the applicable approved form,
  - (b) **include full particulars of the dispute that is to be the subject of the dispute resolution proceedings**, and
  - (c) be accompanied by the fee prescribed in the regulations.
- (3) Except for an application referred to in subsection (6), a person who makes an application for dispute resolution must give a copy of the application to the other party within 3 days of making it, or within a different period specified by the director.
- (5) **The director may refuse to accept an application for dispute resolution if**
- (a) in the director's opinion, the application does not disclose a dispute that may be determined under this Part,
  - (b) the applicant owes outstanding fees or administrative penalty amounts under this Act to the government, or
  - (c) **the application does not comply with subsection (2).**

I find that proceeding with the Landlords' monetary claim at this hearing would be prejudicial to the Tenant, as the absence of particulars that set out how the Landlords arrived at the amount of \$1,000.00 makes it difficult, if not impossible, for the Tenant to adequately prepare a response to the Landlords' claim. The Landlords failed to specify a detailed breakdown of their monetary claim including the amount of each item and what each item being claimed represents in the "Details of Dispute" section of the Application.

For these reasons, the Landlords' Application is dismissed with leave to reapply. As the Landlords were not successful, I find that they are not entitled to the return of their filing fee. The Landlords are reminded to provide a detailed breakdown of their monetary claims and are encouraged to use the Monetary Worksheet available at [www.rto.gov.bc.ca](http://www.rto.gov.bc.ca) when submitting a monetary claim.

The Landlords are still holding the Tenant's security deposit. Section 38(1) of the *Act* requires a landlord to repay deposits or make a claim against 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 comply with section 38(1) of the *Act*, and does not have authority under sections 38(3) or 38(4) of the *Act* to withhold any deposits, section 38(6) stipulates that a tenant is entitled to receive double the amount of the security deposit.

I accept that the Tenant provided an address to the Landlords on March 4, 2023 which was no longer valid at the time that the Landlords sent the Notice of Hearing to the Tenant on March 12, 2023. I find that the Landlords were within the 15 day time limit to submit their Application to retain the Tenant's security deposit, pursuant to Section 38 of the *Act*.

As the address that the Tenant had provided the Landlords is no longer valid, I order that the Tenant re-serve the Landlords with their current forwarding address in writing. Section 39 of the *Act* establishes that it is the Tenant's obligation to provide a forwarding address for return of the Deposits within a year of the end of the tenancy. If that does not occur, the Landlord may keep the Deposit and the Tenants' right to the Deposit is extinguished. I find that the previous address provided by the Tenant to the Landlords does not constitute the Tenants' forwarding address where the Tenant resides as it was no longer valid 8 days after it was provided to the Landlord.

### Conclusion

The Landlords' Application has been refused pursuant to sections 59(5)(c) and 59(2)(b) of the *Act*. The Landlords are at liberty to reapply for her monetary claim; however, are encouraged to provide a detailed breakdown of any future monetary claim at the time an application is submitted. The Landlords are permitted to hold the Tenants' security deposit until the Tenant has provided the Landlords with their forwarding address in writing, at which point the requirements under Section 38 of the Act applies. The Tenant has up to one year beyond the end of the tenancy to do so.

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 11, 2023

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Residential Tenancy Branch