



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Dispute Codes:**

MNSD, MNETC, MNRT, FFT

### **Introduction:**

This hearing was convened in response to an Application for Dispute Resolution filed by the Tenants in which they applied for compensation for being served with a Four Month Notice to End Tenancy, for compensation for emergency repairs, for the return of the security deposit, and to recover the fee for filing this Application for Dispute Resolution.

At the hearing the parties agreed that the Landlord has compensated the Tenants appropriately for being served with a Four Month Notice to End Tenancy for Landlord's Use and, as such, that claim for compensation has been withdrawn.

At the hearing the parties agreed that the Landlord has compensated the Tenants appropriately for repairing the furnace and, as such, that claim for compensation has been withdrawn.

The Tenant stated that on April 04, 2023 the Dispute Resolution Package and evidence submitted to the Residential Tenancy Branch prior to this hearing were sent to the Landlord, via registered mail. The Landlord acknowledged receipt of these documents and the evidence was accepted as evidence for these proceedings.

On April 14, 2023 the Landlord submitted evidence to the Residential Tenancy Branch. The Agent for the Landlord stated that this evidence was sent to the Tenant, via registered mail, on April 03, 2023. The Tenant acknowledged receipt of this evidence, with the exception of some photographs. The documents the Tenant acknowledged receiving were accepted as evidence for these proceedings.

The Agent for the Landlord stated that she is not certain if she sent photographs to the Tenant on April 03, 2023. As the Agent for the Landlord is not certain they were sent and the Tenant does not acknowledge receiving them, the photographs were not accepted as evidence for these proceedings.

The participants were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. Each participant affirmed that they would speak the truth, the whole truth, and nothing but the truth during these proceedings.

The participants were advised that the Residential Tenancy Branch Rules of Procedure prohibit private recording of these proceedings. Each participant affirmed they would not record any portion of these proceedings.

#### Preliminary Matter #1

With the consent of both parties, the Application for Dispute Resolution was amended to reflect the Landlord's proper name, as that name was provided at the hearing.

#### Preliminary Matter #2

The Landlord was prevented from discussing any alleged damages to the rental unit. As the parties were advised at the hearing, the Landlord must file an Application for Dispute Resolution seeking compensation if the Landlord believes the rental unit has been damaged.

Allegations of damages cannot be considered at these proceedings, as there is no claim for damages before me.

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

Are the Tenants entitled to the return of security/pet damage deposit?

#### Background and Evidence:

The Tenants and the Landlord agree that:

- a security deposit of \$2,250.00 was paid to a previous Landlord on January 17, 2021;

- a pet damage deposit of \$2,250.00 was paid to a previous Landlord on January 17, 2021;
- this tenancy ended on March 15, 2023;
- the Tenants provided a forwarding address, in writing, on March 01, 2023;
- the Tenants did not authorize the Landlord, in writing, to retain any portion of the security deposit;
- the Landlord did not file an Application for Dispute Resolution claiming against the security deposit; and
- on April 03, 2023 the Landlord mailed a cheque to the Tenant, in the amount of \$1,829.42, which represented a partial refund of the pet damage and security deposit.

Analysis:

Section 38(1) of the *Act* stipulates that within 15 days after the later of the date the tenancy ends and the date the landlord receives the tenant's forwarding address in writing, the landlord must either repay the security deposit and/or pet damage deposit or file an Application for Dispute Resolution claiming against the deposits.

On the basis of the undisputed evidence, I find that the Landlord failed to comply with section 38(1) of the *Act*, as the Landlord has not repaid the full security deposit and pet damage deposit; the Landlord has not filed an Application for Dispute Resolution claiming against them; and more than 15 days has passed since the tenancy ended and the forwarding address was received.

Section 38(6) of the *Act* stipulates that if a landlord does not comply with subsection 38(1) of the *Act*, the landlord must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable. As I have found that the Landlord did not comply with section 38(1) of the *Act*, I find that the Landlord must pay the Tenants double the security/pet damage deposit, which is \$9,000.00, less the \$1,829.42 which was returned in April of 2023.

I find that the Tenants' Application for Dispute Resolution has merit and that the Tenants are entitled to recover the fee paid to file this Application.

Conclusion:

The Tenants have established a monetary claim of \$7,312.39, which includes double the security/pet damage deposit (\$9,000.00) less the \$1,829.42 returned in April of

2023; \$41.81 in interest on the deposits, and \$100.00 as compensation for the cost of filing this Application for Dispute Resolution, and I am issuing a monetary Order in that amount. In the event that the Landlord does not voluntarily comply with this Order, it may be filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

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 26, 2023

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Residential Tenancy Branch