



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

A matter regarding ELEVATE PERFORMANCE REALTY  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      For the landlord: MNRL-S, FFL  
For the tenants: MNSDB-DR, FFT

### Introduction

Pursuant to section 58 of the Residential Tenancy Act (the Act), I was designated to hear a cross application regarding the above-noted tenancy.

The landlord's application pursuant to the Act is for:

- a monetary order for unpaid rent, pursuant to section 26;
- an authorization to retain the security and pet damage deposits (the deposits), under section 38; and
- an authorization to recover the filing fee, under section 72.

The tenants' application pursuant to the Act is for:

- an order for the landlord to return the deposits, pursuant to section 38; and
- an authorization to recover the filing fee, under section 72.

Tenant MM (the tenant) and the landlord's agents MS (the landlord) and TS attended the hearing. The tenant represented tenant LB. All were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

As both parties were present service was confirmed. The parties each confirmed receipt of the application and evidence (the materials). Based on the testimonies I find that each party was served with the respective materials in accordance with section 89(1) of the Act.

### Preliminary Issue – Prior Decision

The parties raised the issue of *res judicata*, a matter already decided.

The tenant submitted a prior application seeking an order for the landlord to comply with the Act regarding the payment of January 2022 rent. The prior application states:

Rent for Jan 2022 was paid on Dec 31, at 2:31pm. I went to the site office and dropped off an envelope with cash in the drop box. I took a photo of the envelope going in the slot and texted it to the landlord. I got a text back right away acknowledging it was seen. On Jan 20, I received an email from the landlord. The office was broken into on Jan 3rd and our rent with others was stolen. The RCMP could not get prints, so the landlord could not claim with insurance. Landlord wants us to pay again.

The tenant's prior application was dismissed without leave to reapply, as the tenant did not attend the hearing.

The landlord's application is for an order for the payment of January 2022 rent.

Per Rule of Procedure 6.6, the landlord has to onus to prove his claim for the January 2022 unpaid rent. The Residential Tenancy Branch (RTB) did not hear the landlord's claim regarding the payment of January 2022 rent. The tenant's prior claim was an application under section 62 of the Act, and the landlord's current claim is an application under section 26 of the Act.

I allowed the landlord to proceed with his claim, as this is a matter not heard by the RTB.

### Issues to be Decided

Is the landlord entitled to:

1. a monetary order for unpaid rent?
2. an authorization to retain the deposits?
3. an authorization to recover the filing fee?

Are the tenants entitled to:

1. an order for the return of the deposits?
2. an authorization to recover the filing fee?

### Background and Evidence

While I have turned my mind to the evidence and the testimony of the attending parties, not all details of the submission and arguments are reproduced here. The relevant and

important aspects of the landlord's and tenants' claims and my findings are set out below. I explained rule 7.4 to the attending parties; it is the applicants' obligation to present the evidence to substantiate their application.

Both parties agreed the tenancy started on June 1, 2021 and ended on August 31, 2022. Monthly rent when the tenancy ended was \$1,900.00, due on the first day of the month. The landlord collected and holds in trust a \$950.00 security deposit and a \$950.00 pet damage deposit.

The tenant wrote her forwarding address in the move out inspection report (the report) and the landlord's agent JE received the report from the tenant on August 31, 2022. The tenant requested a copy of the report and did not receive it. The tenant served again the forwarding address via registered mail on September 30, 2022.

The landlord does not know if JE conducted the move out inspection, as JE no longer works for the landlord.

The landlord does not remember when he received the forwarding address. The landlord applied for dispute resolution on October 13 and the tenants applied on October 26, 2022.

The tenants did not authorize the landlord to retain the deposits. The tenants are seeking an order for the return of double the deposits, as the landlord did not return it within 15 days from service of the forwarding address.

The landlord is seeking an order for the payment of January 2022 rent, in the amount of \$1,900.00.

The tenant always paid the rent by depositing an envelope containing cash in the landlord's drop box.

The tenant texted the landlord's agent JE a photo of the envelopes containing the rent cash payment from August to December 2021 and JE always replied to the text messages thanking the tenant for the rent payments. The tenant submitted these messages into evidence.

The landlord affirmed that the drop box is available for tenants to deposit cheques and that the preferred methods of rent payment are cheques or electronic transfers. The landlord stated that the tenants are authorized to pay rent with cash at their own risk.

The landlord testified that the office was broken into in June or July 2021 (hereinafter, the first break in) and the landlord attached a warning on the office's front door. The warning states: "To all tenants and owners: Please do not drop any cash or cheque in the drop box after hours or on weekends. Elevate performance is not responsible for missing rent. Thank you for your cooperation."

Both parties agreed that the warning has always been on the office's front door. Later the tenant said that she is not sure if the warning was on the office's front door.

The tenant affirmed that once the landlord accepts a method of payment the tenants have the right to continue to use this method of payment. The tenant deposited an envelope with cash because it was convenient for her.

The landlord continued to offer the drop box for payments after the first break in for cheques only.

The tenant deposited the envelope containing \$1,900.00 for January 2022 rent on December 31, 2021, texted JE and she replied on the same day: "Hello!! Happy new year. Awesome, thank you so much".

JE emailed the tenant on January 20, 2022:

I am emailing you with disappointment, as we need to inform you that our office got broken into on January 3rd 2022.

The intruder broke the front door, leaving glass everywhere and taking the rent money that was dropped off over the weekend. There were multiple tenants affected, you being one of the tenants.

The managing broker and I have been going back and forth on how to deal with this situation. We have taken measures and are trying to see how we can resolve this issue going forward.

We will be removing the drop box and there will be absolutely no exceptions for tenants to pay with cash if paying after hours.

I realize that this is the absolute last thing we needed to happen, but we have a sign posted to the front of the door stating that Elevate is not responsible for missing rent if cash/ cheques are dropped after hours or on weekends. Tenants are well informed that dropping money off after hours is at their own risk.

I also know it seems unreasonable, but we are giving the tenants three (3) months to pay back January rent.

The landlord submitted a ledger dated August 31, 2022 indicating the tenant did not pay rent in January 2022.

### Analysis

I will first analyze the landlord's application, as the landlord's application was submitted before the tenant's application.

### Unpaid Rent

Per section 26(1) of the Act, the tenant must pay rent in full when it is due.

I accept the uncontested testimony that the tenant paid rent by depositing an envelope containing cash in the drop box offered by the landlord and the landlord's agent JE thanked the tenant for the cash payments between August 2021 and January 2022.

I find the tenant's testimony about the warning on the office's front door was contradictory. Based on the landlord's convincing testimony, I find the landlord attached the warning on the front door in June or July 2021 and the warning remained attached to the door until January 2022.

Based on the above, I find the parties tacitly accept the payment of rent with cash by depositing an envelope in the drop box, as the landlord was aware the tenant was paying rent monthly using this method and thanked the tenant every month for the cash payment.

Even after the first break in, the landlord continued to accept cash payments via the drop box and only on January 20, 2022 the landlord informed the tenant that he removed the drop box and that the tenants can no longer pay with cash when the office is closed. The landlord could have taken these wise measures earlier. The landlord did not mitigate his losses by continuing to accept cash payments via the drop in box even after the first break in. I note the tenant was also not wise by paying rent in cash via the drop box. However, the landlord accepted these payments.

Furthermore, I find the monthly text messages from JE to the tenant thanking her for the cash payment outweigh the general warning on the office's front door. As the landlord

continued to accept the drop box cash payments, I find this was an acceptable form of payment until January 20, 2022.

Based on the tenant's convincing testimony, the text message dated December 31, 2021 and the email dated January 20, 2022, I find the tenant deposited an envelope in the drop box containing \$1,900.00 for January 2022 rent on December 31, 2021 and this money was stolen from the landlord on January 3, 2022.

Thus, I find the tenant paid January 2022 rent in full and dismiss the landlord's claim.

### Deposits

I accept the tenant's convincing and undisputed testimony that she provided the forwarding address on August 31, 2022 by writing it on the report and that the landlord's agent JE received it in person.

Section 38(1) of the Act requires the landlord to either return the tenant's deposits in full or file for dispute resolution for authorization to retain the deposit 15 days after the later of the end of a tenancy or upon receipt of the tenant's forwarding address in writing.

Section 38(6)(b) of the Act states the landlord must pay double the amount of the deposits if the landlord does not apply for dispute resolution in accordance with section 38(1).

The tenancy ended and the forwarding address was provided in writing on August 31, 2022. The landlord retained the deposits and submitted his application on October 13, 2022.

Per section 38(6)(b) of the Act, the landlord must pay the tenants double the deposits, as the landlord applied after the timeline of section 38(1).

According to the deposit interest calculator (available at <http://www.housing.gov.bc.ca/rtb/WebTools/InterestOnDepositCalculator.html>), the interest accrued on the deposit is \$19.63. Per Policy Guideline 17, interest is calculated only on the original deposit and is not doubled.

Under these circumstances and in accordance with section 38(6)(b) of the Act, I find the

the tenants are entitled to \$ 3,819.63 (double the \$1,900.00 deposits plus \$19.63 interest).

#### Filing fees and summary

In accordance with section 72 of the Act, the landlord must bear the cost of the filing fee, as the landlord was not successful.

I award the tenants the \$100.00 filing fee, as the tenants were successful.

In summary, the tenants are entitled to \$3,919.63.

#### Conclusion

Under sections 38 and 72 of the Act, I award the tenants \$3,919.63. The tenants are provided with this order in the above terms and the landlord must be served with this order. Should the landlord fail to comply with this order, this order may be filed in the Small Claims Division of the Provincial 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: July 13, 2023

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Residential Tenancy Branch