



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Ministry of Housing

## **DECISION**

<b><u>Dispute Codes</u></b>	For the landlord:	MND-S
	For the tenant:	MNSD, FF

### **Introduction**

This hearing was convened as the result of the cross applications of the parties for dispute resolution seeking remedy under the Residential Tenancy Act (Act).

The landlord applied for the following:

- compensation for alleged damage to the rental unit by the tenant; and
- authority to keep the tenants' security deposit to use against a monetary award.

The tenants applied for the following:

- a return of their security deposit; and
- recovery of the filing fee.

The landlord, the landlord's agent (KM), and the tenant attended the hearing. The hearing process was explained to the parties and an opportunity was given to ask questions about the hearing process. All parties were affirmed.

Thereafter, preliminary matters were discussed prior to a hearing on the merits of the applications.

The landlords' monetary claim listed on their application for alleged damage was \$8,674.84. This amount was listed on their amended application, dated October 28, 2022. The only breakdown or particulars of the landlord's claim was on a spreadsheet, filed in evidence, listing a claim of \$3,234.77.

Apart from that, the landlord said they filed another amendment which increased their monetary claim to over \$15,000.

That amendment was not filed in this dispute. The landlord said they mailed the amendment to the Residential Tenancy Branch (RTB). Upon review, I determined that the landlord had listed a different dispute resolution application number on the document and was in that other application.

The tenant said they never received any of the amendments.

The tenants asked for their security deposit of \$1150 be doubled and returned. Thereafter, testimony was taken on the matter of the tenants' security deposit.

I have reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch Rules of Procedure (Rules). However, not all details of the parties' respective submissions and or arguments are reproduced here; further, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Words utilizing the singular shall also include the plural and vice versa where the context requires.

#### Preliminary and Procedural Matters-

Landlord's application –

I advised the landlord that his application for monetary compensation was being refused, pursuant to section 59(5)(c) of the Act, because the application did not provide sufficient particulars of the claim for compensation, as is required by section 59(2)(b) of the Act.

From a review of the landlord's application and evidence, I find the landlord failed to provide a breakdown or particulars of the final claim as to how the landlord arrived at the amount listed.

The landlords were informed that their application was being refused, pursuant to section 59(5)(c) of the Act because I find that the application provided insufficient particulars of their claim for compensation, as is required by section 59(2)(b) of the Act.

Additionally, Rule 2.5 states that the applicant must submit a detailed calculation of any monetary claim being made and copies of all other documentary and digital evidence to be relied on in the proceeding. The applicants are provided with instructions in the application package as to these evidence requirements. The RTB provides monetary order worksheet forms parties may use to detail their monetary claim.

The objective of the Rules is to ensure a fair, efficient, and consistent process for resolving disputes for landlords and tenants.

The tenant confirmed he did also did not receive a detailed listing or breakdown of the monetary claim.

I find that proceeding with the monetary claim at this hearing would be prejudicial and procedurally unfair to the other party, as the absence of particulars that sets out how the landlords arrived at the amount being claimed makes it difficult, if not impossible, for the other to adequately prepare a response to the claim.

Both parties have the right to a fair hearing and the respondents are entitled to know the full particulars of the claim made against them at the time the applicant submits their application in order to prepare a response.

I therefore **dismiss** the landlord's application for monetary compensation, **with leave to reapply**.

Leave to reapply does not extend any applicable time limitation period.

#### Issue(s) to be Decided

Are the tenants entitled to the return of their security deposit and that it be doubled?

#### Background and Evidence

The evidence shows this tenancy began on or about May 1, 2011 and ended on or about September 29, 2022. The tenant paid a security deposit of \$1150.

The tenant submitted that there was no move-in or move-out inspection. The tenant submitted they provided the landlord with their written forwarding address on August 30, 2022, and the landlord did not return any or all the security deposit. The tenant

submitted documentary and photographic evidence of proof of service of the written forwarding address.

The tenant submitted they are entitled to a return of the security deposit, doubled, for these reasons.

The landlord agreed there was no move-in inspection, but described there was a walk through. The landlord submitted that the tenant refused to attend a move-out inspection, but agreed they did not offer the tenant a second opportunity for the inspection.

In response, the tenant said there was no request for a move-out inspection as the landlord was warned by the police not to come to the property.

### Analysis

Based on the relevant oral and written evidence, and on a balance of probabilities, I find as follows:

Under section 38(1) of the Act, a landlord is required to either return a tenant's security deposit or to file an application for dispute resolution to retain the security deposit within 15 days of the later of receiving the tenant's forwarding address in writing and the end of the tenancy. Section 38(6) of the Act states that if a landlord fails to comply, or follow the requirements of section 38(1), then the landlord must pay the tenant double the amount of their security deposit.

Additionally, when a landlord fails to conduct move-in or move-out inspections and properly complete a condition inspection report, as is the case here, the landlord's right to make a claim against the security deposit for damage to the property is extinguished under sections 24 and 36 of the Act.

In this case, the landlord's application claiming against the security deposit was filed on October 13, 2022, within 15 days of the end of the tenancy on September 29, 2022. Although I find the landlord's right to claim against the security deposit for damage to the rental unit was extinguished, the landlord's claim also included a claim for cleaning, which I find is not damage. As part of the landlord's claim was not for damage to the property but cleaning, I find that the landlord complied with the requirement under

section 38 to make an application to keep the deposit within 15 days of the end of the tenancy. I find the tenant is not entitled to double recovery of the deposit.

Although I find the tenant is not entitled to double his security deposit, as I have dismissed the landlord's monetary claim against the tenant's security deposit, I find the tenant is entitled to a return of his security deposit of \$1150.

Pursuant to section 62(3) of the Act, I order the landlord to return the tenant's security deposit of \$1150, plus interest of \$12.13, immediately, for a total of **\$1162.13**.

I also grant the tenants recovery of their filing fee of **\$100**.

To give effect to this order, I grant the tenants a **monetary order** pursuant to section 67 of the Act for the amount **\$1262.13**.

Should the landlord fail to pay the tenants this amount without delay, the monetary order must be served upon the landlord for enforcement, and may be filed in the Provincial Court of British Columbia (Small Claims) for enforcement as an Order of that Court.

The landlord is cautioned that costs of such enforcement are recoverable from the landlord.

### Conclusion

The landlord's application was dismissed with leave to reapply, for the reasons cited.

The tenant's application for a return of their security deposit and recovery of the filing fee was successful. The tenant's request for their security deposit to be doubled was declined. The tenant is granted a monetary order for the amount awarded.

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*. Pursuant to section 77(3) of the Act, a decision or an order is final and binding, except as otherwise provided in the Act.

Dated: July 16, 2023