



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

## **DECISION**

Dispute Codes      MNSDS-DR, FFT

### Introduction

This hearing was reconvened from a hearing on March 27, 2023 regarding the Tenants' application under the *Residential Tenancy Act* (the "Act") for:

- return of double the security deposit in the amount of \$2,200.00 pursuant to section 38.1 of the Act; and
- authorization to recover the filing fee from the Landlord pursuant to section 72 of the Act.

On July 20, 2022, an adjudicator issued an interim decision (the "First Interim Decision") adjourning this matter from a direct request application to a participatory hearing. On March 27, 2023, I issued a second decision in this matter (the "Second Interim Decision") adjourning this matter to another hearing. This decision should be read together with the First and Second Interim Decisions.

One of the Tenants, RMR, attended this reconvened hearing and given a full opportunity to be heard, to present affirmed testimony, and to make submissions.

No one attended on behalf of the Landlord. I left the teleconference hearing connection open until 1:54 pm in order to enable the Landlord to call into the hearing scheduled to start at 1:30 pm. I confirmed that the correct call-in numbers and participant access code had been provided on the hearing notice. I used the teleconference system to confirm that RMR and I were the only ones who had called into the hearing.

### Preliminary Matter – Parties

This application initially named two other landlords, VFX and JP. According to the Tenants, VFX is a friend of the Landlord who had communicated with the Tenants on the Landlord's behalf, and JP is the Landlord's spouse. The landlord named on the parties' tenancy agreement is Century 21 In Town Realty as agent for the Landlord. According to the Tenants, the Landlord is the owner of the rental unit. I find there is insufficient evidence that VFX and JP fall within the definition of a "landlord" under section 1 of the Act, such that they should each be personally liable to the Tenants for

the return of the security deposit. Therefore, pursuant to section 64(3)(c) of the Act, I have amended this application to remove VFX and JP as landlords and respondents.

#### Preliminary Matter – Service of Dispute Resolution Documents

RMR confirmed that the Tenants served the Landlord with the documents required by the Second Interim Decision, including the original notice of dispute resolution proceeding, the Tenants' evidence, a copy of the Second Interim Decision, and the hearing notice for this reconvened hearing (collectively, the "Proceeding Package"). RMR confirmed that the Tenants sent a registered mail package on April 11, 2023 to the Landlord's address as stated on the tenancy agreement. RMR confirmed that a second registered mail package was also sent to VFX at VFX's address on April 11, 2023. RMR explained that the Tenants were told to contact VFX at VFX's address since the Landlord is overseas. The Tenants submitted registered mail tracking numbers in support of service. Tracking records indicate that the packages were delivered on April 13, 2023. Based on the foregoing, I find the Landlord was served with the Proceeding Package in accordance with sections 88 and 89 of the Act.

#### Preliminary Matter – Landlord's Non-attendance

Having found the Landlord to be duly served with notice of this hearing as stated above, I directed this hearing to proceed in the Landlord's absence.

I note that Rule 7.4 of the Residential Tenancy Branch Rules of Procedure states:

##### **7.4 Evidence must be presented**

Evidence must be presented by the party who submitted it, or by the party's agent. If a party or their agent does not attend the hearing to present evidence, any written submissions supplied may or may not be considered.

Since no one attended this hearing on behalf of the Landlord, I have not considered any evidence submitted by the Landlord to the Residential Tenancy Branch.

#### Issues to be Decided

1. Are the Tenants entitled to the return of the security deposit?
2. Are the Tenants entitled to reimbursement of the filing fee?

#### Background and Evidence

While I have turned my mind to all the accepted documentary evidence and the testimony presented, only the details of the respective submissions and arguments relevant to the issues and findings in this matter are reproduced here. The principal aspects of this application and my findings are set out below.

This tenancy commenced on May 1, 2019 and ended on April 27, 2022. Rent was \$2,200.00 per month. The Tenants paid a security deposit of \$1,100.00.

The parties attended a move-in inspection of the rental unit on April 24, 2019. The parties attended a move-out inspection on April 27, 2022. The parties completed condition inspection reports for both inspections. According to the Tenants, they were only given a copy of the move-out condition inspection report.

The Tenants gave the Landlord their forwarding address on the move-out condition inspection report on April 27, 2022. RMR confirmed that this was given to the Landlord's agent, LH.

On June 7, 2022, the Tenants received an e-transfer of \$995.00 representing a partial return of their security deposit. The Tenants submit that they did not agree in writing for the Landlord to retain any portion of their security deposit.

### Analysis

#### *1. Are the Tenants entitled to the return of the security deposit?*

Pursuant to sections 24 and 36 of the Act, landlords and tenants can extinguish their rights in relation to the security deposit if they do not comply with the Act and the regulations.

I find the parties participated in move-in and move-out inspections of the rental unit. Therefore, I find the Tenants did not extinguish their right to the return of the security deposit under sections 24(1) or 36(1) of the Act. Furthermore, I find the Tenants gave their forwarding address in writing to the Landlord within one year of the tenancy end date. As such, I find the Tenants' right to the security deposit was also not extinguished under section 39 of the Act.

In contrast, I find the Landlord's right to claim against the security deposit for damage to the rental unit was extinguished under section 24(2)(c) of the Act. I accept the Tenants' undisputed testimony that the Landlord did not provide a copy of the move-in condition inspection report to the Tenants as required under section 24(2)(c) of the Act and the regulations. Extinguishment means that the Landlord could not have made an application to claim against the deposit for damage to the rental unit, but could have

made other claims against the security deposit within the time limit required under the Act, or, after returning the deposit, still make an application to seek compensation for damage to the rental unit.

Under section 38 of the Act, a landlord must (a) repay a security or pet damage deposit to the tenant with interest or (b) make an application for dispute resolution claiming against the deposit, within 15 days after the later of:

- the tenancy end date, or
- the date the landlord receives the tenant's forwarding address in writing,

unless the landlord has the tenant's written consent to keep the deposit or a previous order from the Residential Tenancy Branch.

In this case, I find the tenancy ended on April 27, 2022.

Based on the Tenants' undisputed testimony, I find the Landlord was served with the Tenants' forwarding address in writing on April 27, 2022, in accordance with section 88(b) of the Act.

I find that under section 38(1) of the Act, the Landlord had 15 days from April 27, 2022, or until May 12, 2022, to repay the security deposit to the Tenants in full or make an application to keep the security deposit for a claim other than damage to the rental unit. I find the Tenants did not agree in writing for the Landlord to keep any portion of the deposit. I find there is no evidence of any previous orders made by the Residential Tenancy Branch regarding compensation owed by the Tenants or authorization for the Landlord to keep the deposit. I find the Tenants acknowledged that the Landlord returned \$995.00 from the security deposit on June 7, 2022. I find the Landlord did not return the security deposit in full to the Tenants or make an application by May 12, 2022 as required under section 38(1) of the Act.

Section 38(6) of the Act states that if a landlord does not comply with section 38(1), the landlord may not make a claim against the security deposit and must pay the tenant double the amount of the deposit.

Residential Tenancy Policy Guideline 17. Security Deposit and Set off provides the following sample calculation where a landlord has returned a portion of the deposit but the doubling provision of the Act applies:

Example A: A tenant paid \$400 as a security deposit. At the end of the tenancy, the landlord held back \$125 without the tenant's written permission and without an order from the Residential Tenancy Branch. The tenant applied for a monetary order and a hearing was held.

The arbitrator doubles the amount paid as a security deposit ( $\$400 \times 2 = \$800$ ), then deducts the amount already returned to the tenant, to determine the amount of the monetary order. In this example, the amount of the monetary order is  $\$525.00$  ( $\$800 - \$275 = \$525$ ).

Based on the foregoing, I conclude that the Tenants are entitled to a return of double the security deposit under section 38 of the Act, less the amount already returned by the Landlord, or  $\$1,100.00 \times 2 - \$995.00 = \$1,205.00$ .

In addition, section 38(1) of the Act requires that interest be paid on a security deposit. The interest rate on deposits was 0% from 2019 to 2022, and is 1.95% in 2023. According to Policy Guideline 17, interest is calculated on the original deposit amount, before any deductions are made, and is not doubled. I find the Landlord returned  $\$995.00$  of the security deposit to the Tenants in 2022, before interest began accruing. Therefore, I find the Tenants are entitled to interest on the unreturned portion of the security deposit, or  $\$105.00$ . Using the Residential Tenancy Branch Deposit Interest Calculator online tool, I find the Tenants are entitled to  $\$1.19$  of interest on the unreturned portion of the security deposit from when it was paid (April 6, 2019) to the date of this decision, calculated as follows:

2019  $\$105.00$ :  $\$0.00$  interest owing (0% rate for 73.96% of year)  
2020  $\$105.00$ :  $\$0.00$  interest owing (0% rate for 100.00% of year)  
2021  $\$105.00$ :  $\$0.00$  interest owing (0% rate for 100.00% of year)  
2022  $\$105.00$ :  $\$0.00$  interest owing (0% rate for 100.00% of year)  
2023  $\$105.00$ :  $\$1.19$  interest owing (1.95% rate for 57.80% of year)

Pursuant to section 38 of the Act, I order the Landlord to pay the Tenants  $\$1,206.19$  (or  $\$1,100.00 \times 2 + \$1.19 - \$995.00$ ) for the return of double the security deposit plus interest, less the amount already returned by the Landlord.

## *2. Are the Tenants entitled to reimbursement of the filing fee?*

The Tenants' claim for the return of the security deposit is successful. Pursuant to section 72(1) of the Act, I grant the Tenants' claim for reimbursement of their filing fee.

## Conclusion

The Tenants' claim for the return of the security deposit and reimbursement of the filing fee are successful.

Pursuant to sections 38 and 72 of the Act, I grant the Tenants a Monetary Order in the amount of  **$\$1,306.19$** , calculated as follows:

Item	Amount
Return of Double the Security Deposit Less Amount Returned (\$1,100.00 × 2 - \$995.00)	\$1,205.00
Interest on Security Deposit	\$1.19
Filing Fee	\$100.00
<b>Total Monetary Order for Tenants</b>	<b>\$1,306.19</b>

This Order may be served on the Landlord, filed in the Small Claims Division of the Provincial Court of British Columbia, 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 Act.

Dated: July 30, 2023

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Residential Tenancy Branch