



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Public Safety and Solicitor General

## **DECISION**

Dispute Codes      MNDC, MNSD, FF

### Introduction

This was an application by the tenants for a monetary order for compensation and for the return of their security deposit including double the deposit amount. The hearing was conducted by conference call. The named tenant and the landlord participated in the hearing.

### Issue(s) to be Decided

Are the tenants entitled to the return of their security deposit including double the amount?

Are the tenants entitled to monetary compensation for loss of services in the rental unit?

### Background and Evidence

The rental unit is a strata title apartment in Vancouver. The tenancy began on February 1, 2010 for a one year fixed term. Monthly rent was \$2,900.00 payable on first day of each month. The tenants paid a security deposit of \$1,450.00 on January 13, 2010.

On or about March 3, 2010 the tenants notified the landlord by e-mail that they intended to move out of the rental unit as of April 1, 2010. The tenants complained about a lack of hot water for five days. In the application for dispute resolution the tenants claimed to have been without hot water for nine days and they claimed repayment of pro-rated rent of \$95.34 per day for each of the nine days.

The landlord submitted a letter from the strata corporation manager; he reported that beginning February 20<sup>th</sup> the boiler circuit in the strata building began tripping and shutting off. When the circuit tripped it would be re-set and commence to work again. The problem was resolved on or about March 10, 2010. According to the landlord the hot water problem was intermittent; it was generally not off for more than a few hours at a time.

The tenants sent a letter to the landlord by e-mail on March 31, 2010. The letter confirmed that the tenants had moved out of the rental unit and returned the keys. The letter provided the tenants' forwarding address and requested the return of the security deposit. At the hearing the landlord acknowledged that he received the latter.

The landlord did not return the security deposit and he did not file an application for dispute resolution to claim the deposit. He testified that he was a new landlord and was unaware to the requirements with respect to security deposits when the tenancy ended. The landlord testified that he suffered a loss due to the reduced rent he obtained from new tenants and due to additional re-leasing charges that he incurred to re-rent the unit. The landlord intends to file an application for dispute resolution to claim these amounts from the tenants.

## Analysis

Section 38 of the *Residential Tenancy Act* provides that when a tenancy ends, the landlord may only keep a security deposit if the tenant has consented in writing, or the landlord has an order for payment which has not been paid. Otherwise, the landlord must return the deposit, with interest if payable, or make a claim in the form of an Application for Dispute Resolution. Those steps must be taken within fifteen days of the



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end of the tenancy, or the date the tenant provides a forwarding address in writing, whichever is later. Section 38(6) provides that a landlord who does not comply with this provision may not make a claim against the deposit and must pay the tenants double the amount of the security deposit and pet deposit.

I am satisfied that the tenants provided the landlord with her forwarding address in writing, and based upon the acknowledgement of the landlord at the hearing I find that the tenants served the landlord with documents notifying the landlord of this application as required by the *Act*.

The tenants' security deposit was not refunded within 15 days as required by section 38(1) of the *Residential Tenancy Act* and the doubling provision of section 38(6) therefore applies. I grant the tenants' application and award them the sum of \$2,900.00. With respect to the tenants' claim for compensation for a lack of hot water, I find the amount claimed to be excessive. The absence of hot water did not render the tenancy valueless to the tenants and their claim for a full rebate of rent for the days they claimed to have been without hot water is not warranted. I accept the landlord's evidence that for some of the days mentioned the tenants were without hot water for only a few hours. I award the tenants a lump sum amount of \$150.00 for the absence of hot water. The tenants is entitled to recover the \$50.00 filing fee for this application for a total claim of \$3,100.00 and I grant the tenants a monetary order against the landlord in the said amount. This order may be registered in the Small Claims Court and enforced as an order of that Court.

Dated: January 11, 2011.

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