# Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

## DECISION

**Dispute Codes**:

Tenants' application filed May 30, 2012: MNSD; FF

Landlords' application filed July 11, 2012: MND; MNR; MNSD; MNDC; FF

**Introduction**

This Hearing was convened to consider cross applications. The Tenants seek return of the security deposit and pet damage deposit; and to recover the cost of the filing fee from the Landlords.

The Landlords seek a Monetary Order for unpaid rent and damages to the rental unit; compensation for damage or loss under the Act, regulation or tenancy agreement; to apply the security deposit and pet damage deposit in partial satisfaction of their monetary award; and to recover the cost of the filing fee from the Tenants.

The parties gave affirmed testimony at the Hearings.

It was determined that the Tenants served the Landlords with their Notice of Hearing documents by registered mail sent on June 1, 2012. It was also determined that the Landlords served the Tenants with their Notice of Hearing documents July 13, 2012.

These matters were convened on July 31, 2012, and adjourned to September 4, 2012, because of insufficient time to hear the parties' submissions on July 31, 2012.

**Issues to be Decided:**

1. Are the Tenants entitled to return of the security and pet damage deposits?
2. Are the Landlords entitled to a Monetary Order for unpaid rent for the month of March, 2012; the cost of removing and replacing drywall and replacing the tub surround; loss of income for the month of April, 2012; and replacing the locks?
3. Are the Landlords entitled to apply the security and pet damage deposits towards their monetary award?

**Background and Evidence**

A copy of the tenancy agreement was provided by both parties. This tenancy began on December 14, 2011. The Tenancy agreement provides that rent at the beginning of the tenancy was $940.00, including utilities, due in advance on 31st day of each month.

The parties testified that internet was also included in the rent, but did not work properly so the parties agreed that rent would be reduced to $900.00 per month. The Tenants paid a security deposit in the amount of $450.00 and a pet damage deposit in the amount of $225.00 on December 15, 2011.

A Condition Inspection Report was completed at the beginning of the tenancy, a copy of which was provided in evidence. No Condition Inspection Report was completed at the end of the tenancy.

The Tenants testified that they gave notice by e-mail on February 29, 2012 that they would be ending the tenancy effective March 31, 2012. They stated that they moved out early, on March 13, 2012, but that they had until March 31, 2012, to pick up some remaining items and return the keys. The Tenants testified that they returned to the rental unit on March 30, 2012, and found that the locks had been changed. The Tenants stated that they called the Landlords to talk about a date for completing the move-out condition inspection report, but the female Landlord said she would call them back and didn't.

The Landlords stated that they did not accept the Tenants' e-mail as due notice to end the tenancy. The Landlords testified that the Tenants abandoned the rental unit in the first or second week of March, 2012, and that the Landlords had to change the locks because the Tenants had not returned the keys. The Landlords provided documentary evidence of the amount they paid to change the locks. The female Landlord testified that she told the Tenants that she wanted to do the Condition Inspection on April 2, 2012, but the Tenants did agree.

The Tenants stated that they shampooed the carpets and left the rental unit in a clean, undamaged condition before they moved on March 13, 2012. They testified that they posted a letter to the Landlords' door on April 11 or 12, 2012, including their forwarding address and one set of keys to the rental unit. The Tenants stated that they did not return the other set of keys because it was in the rental unit and they could not gain access on March 30, 2012. The Tenants provided a copy of the letter dated April 10, 2012, in evidence.

The Landlords denied receiving the letter. The female Landlord stated that she is home every day and that the Tenants could have served her personally with the letter. The Tenants stated that they did not wish to see the Landlord because of the bad feelings between the parties.

The Landlords testified that the Tenants did not pay rent for the month of March, 2012. The Tenants testified that they paid rent for March, 2012. They stated that they paid

rent by post-dated cheque and that the Landlord returned their post-dated cheques at the end of the tenancy, except for the March rent cheque.

During the July 31, 2012, Hearing, the female Tenant stated that she had proof that the Landlord cashed their March rent cheque (in the form of a negotiated cheque), but that they did not have time to submit it into evidence before the Hearing. The Landlord stated that she also had evidence that the Tenants did not pay their rent for March (a copy of her bank statement), but that she did not provide it in evidence either.

I provided both parties with liberty to provide documentary evidence in support of their positions with respect to whether or not the Tenant had paid rent for March, 2012. Further to my direction of July 31, 2012, the Tenant provided the Residential Tenancy Branch with documentary evidence that March rent had been paid, but did not provide a copy of the evidence to the Landlords. The female Tenant stated that she did not know that she would be required to do so. The female Landlord stated that she did not provide documentary evidence (a copy of her bank statement for March, 2012) to support her allegation that March rent had not been paid because she was ill.

The Landlords testified that the Tenants advised them that there was water damage in the bathroom in the middle of February, 2012. They stated that the Tenants were responsible for the damage because they did not close the shower doors properly which caused the water to saturate the drywall and pool on the floor. The Landlords stated that this caused drywall damage and damage to the wooden trim around the bathtub. The Landlords stated that the tub surround had to be removed in order to repair the drywall and that it could not be re-used. Therefore, the Landlord seeks to recover the cost of replacing the drywall, trim and shower surround. The Landlord provided an invoice and a letter from the bathroom renovators in evidence, dated June 23, 2012.

The Tenants stated that the water damage was not their fault. They stated that the drainage system was not properly hooked up and the water would seep away from the tub and pool inside the wall. The Landlords acknowledged that there was previous damage due to faulty installation of plumbing, but stated that it was fixed the summer before the Tenants moved in.

## Analysis

I have considered all testimony and documentary evidence that met the requirements of the rules of procedure. However, I have referred only to the evidence that was relevant to the parties' applications in this Decision.

Regarding the Tenants' application:

Security deposits are held in a form of trust by a landlord for a tenant, to be applied in accordance with the provisions of the Act.

Section 38(1) of the Act provides that (unless a landlord has the tenant's written consent to retain a portion of the security or pet damage deposit) at the end of the tenancy and after receipt of a tenant's forwarding address in writing, a landlord has 15 days to either:

1. repay the security deposit and pet damage deposit in full, together with any accrued interest; or
2. make an application for dispute resolution claiming against the deposits.

The Landlords denied receiving the Tenants' written notification of their forwarding address dated April 10, 2012, until they received copies of the Tenants' documentary evidence. Nevertheless, the Tenants' Application for Dispute Resolution discloses the Tenants' address for service of documents. I find that the Landlords received the Tenants' forwarding address in writing when they were served with the Tenants' Application for Dispute Resolution, which was served by registered mail sent June 1, 2012. Section 90 of the Act deems service in this manner to be effective 5 days after mailing the documents. Therefore, I find that the Landlords were sufficiently served with the Tenants' forwarding address in writing on June 6, 2012, pursuant to the provisions of Section 71(2)(c) of the Act. The Landlords filed their Application against the security deposit on July 11, 2012, which is not within 15 days of receipt of the Tenants' forwarding address. The Landlords have not returned any of the security or pet damage deposit.

Section 38(2) of the Act states that Section 38(1) of the Act does not apply if a tenant's right to the return of the security deposit or pet damage deposit is extinguished because the tenant failed to participate in a Condition Inspection at the beginning or at the end of the tenancy. Section 36(2) of the Act states that a landlord's right to claim against a security deposit or pet damage deposit is extinguished if the landlord does not provide 2 opportunities for inspection. Therefore, the onus is on a landlord to provide 2 opportunities for a tenant to meet for a condition inspection. Pursuant to the provisions of Section 17 of the Residential Tenancy Regulations, this includes providing the tenant with a Notice of Final Inspection Opportunity. In this case, the Landlord indicated that she had attempted to arrange for a final Condition Inspection, but provided no evidence that the prescribed Notice had been provided to the Tenants, as required under the Regulations. Therefore, I find that the Landlord did not comply with Section 36(2) of the Act and that therefore, the Tenants' right to claim against the security deposit is preserved.

Section 38(6) of the Act provides that if a landlord does not comply with Section 38(1) of the Act, the landlord **must** pay the tenant double the amount of the security and pet damage deposits. Therefore, I find that the Tenants are entitled to a monetary order for double the deposits, in the amount of **$1,350.00**. No interest has accrued on the deposits.

The Tenants have been successful in their application and I find that they are entitled to recover the cost of the **$50.00** filing fee from the Landlords.

The Tenants have established a total monetary award of **$1,400.00**.

Regarding the Landlords' application:

This is the Landlords' claim for damage or loss under the Act and therefore the Landlords have the burden of proof to establish their claim on the civil standard, the balance of probabilities.

To prove a loss and have the Tenants pay for the loss requires the Landlords to satisfy four different elements:

1. Proof that the damage or loss exists,
2. Proof that the damage or loss occurred due to the actions or neglect of the Tenants in violation of the Act,
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage, and
4. Proof that the Landlord followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

With respect to the Landlords' claim for unpaid rent for the month of March, 2012, I find that the Landlords have not provided sufficient evidence that the Tenants did not pay rent for the month of March, 2012. I do not accept the female Landlord's submission that she was too ill to provide documentary proof. The female Landlord did not provide any evidence that she was ill, or for what period of time. There was no evidence that the male Landlord was incapacitated and could not provide the evidence. A party can appoint an agent to provide documents to the Branch and to the other party. As I have found that the Landlords have not proven part 1 of the test above, I dismiss this portion of the Landlords' claim without leave to re-apply.

Having found that the Tenants paid rent for the month of March, 2012, I find that the Landlords were not entitled to consider the rental unit abandoned before March 31, 2012. I find that the Landlords changed the locks unlawfully and that they are not

entitled to recover that cost. This portion of their application is dismissed without leave to reapply.

The Landlord provided a letter from the bathroom renovator, which indicates that in their professional opinion water damage was caused to the drywall and trim due to misuse of the shower door. The letter dated June 23, 2012, states, in part:

> "Some of the damage was due to the plumbing underneath was installed incorrectly, the plumbing side at the bottom, it was also due to water constantly being on the floor. The other side appeared to damaged by negligence and/or in-proper use.....
>
> Some of the damage was preventable by; making sure the shower doors were closes completely, soaking up the water that fell our of the shower and onto the floor and not letting the water saturate the wood trim that went around the bathroom."
>
> (reproduced as written)

Based on the Landlords' documentary evidence, I am satisfied that a portion of the damage to the bathroom was caused by the Tenants. I allow the Landlords' claim in the amount of $350.00 for removal of the drywall, $60.00 for the tool rental and HST in the amount of $49.20, for a total of **$459.20**. I find that the Landlords did not provide sufficient evidence of the cost of mudding and taping of new drywall, or that the shower surround was replaced because of the Tenants' neglect only. The professional's letter indicates that there were other issues with respect to the plumbing that were not the Tenants' fault.

Section 52 of the Act requires a notice to end tenancy to be in writing and that it be signed and dated by the landlord or tenant giving the notice. I do not find that a notice to end tenancy given by e-mail complies with Section 52 of the Act. A landlord might put himself at risk if he acted on such a notice and re-rented the rental unit because if the tenant chose not move out, the notice could be found to be invalid and the landlord could be liable for damages from the new tenant. I find that the Tenants did not provide sufficient notice to end the tenancy and that the Landlords suffered a loss as a result of that breach of the Act. Therefore, I allow the Landlords' claim for loss of revenue for the month of April in the amount of **$900.00**.

The Landlords have been partially successful in their claim and I find that they are entitled to recover the cost of the **$50.00** filing fee from the Tenants.
The security and pet damage deposits have already been extinguished under the Tenants' claim.

The Landlords have established a total monetary award, calculated as follows:

| | |
|---|---|
| Damage to drywall | $459.20 |
| Loss of revenue for April, 2012 | $900.00 |
| Recovery of filing fee | $50.00 |
| TOTAL | **$1,409.20** |

Set-off of monetary awards:

I hereby set off the Tenants' monetary award against the Landlords' monetary award and provide the Landlords a Monetary Order against the Tenants in the amount of **$9.20**.

## Conclusion

The Tenants have established a monetary award in the amount of **$1,400.00.**

The Landlords have established a monetary award in the amount of **$1,409.20**.

I hereby set off the Tenants' monetary award against the Landlords' monetary award and provide the Landlords with a Monetary Order in the amount of **$9.20** for service upon the Tenants. This Order may be filed in the Provincial Court 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: September 13, 2012.

Residential Tenancy Branch