



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes** MNSD; FF

### **Introduction**

This is the Tenants' Application for Dispute Resolution seeking return of the security deposit and to recover the cost of the filing fee from the Landlord.

Both parties attended the Hearing, which took place by teleconference. The Tenant JV gave affirmed testimony. The Landlord and his daughter AK, who translated from English to Punjabi and Punjabi to English, also gave affirmed testimony.

It was determined that the Tenants hand delivered the Notice of Hearing documents and copies of their documentary evidence to the Landlord "in November, 2017". The Landlord did not provide any documentary evidence.

The Landlord testified that he has filed his own Application; however, it was not made in time for the Landlord's Application to be heard with the Tenants' Application. As of the date of this Hearing, the Tenants have not yet been served with the Landlord's Application.

### **Issue(s) to be Decided**

Are the Tenants entitled to return of the security deposit?

### **Background and Evidence**

This tenancy began on May 3, 2017. The Tenants paid a security deposit in the amount of \$600.00, which the Landlord is still holding.

The Tenants requested return of the security deposit, by text, when they moved out of the rental unit on October 31, 2017, but did not provide their forwarding address to the Landlord.

There was no Condition Inspection Report completed at the end of the tenancy. The Landlord did not provide the Tenants with a Notice of Final Inspection Opportunity in accordance with the regulation.

### **Analysis**

Section 38 of the Act provides for how security deposits must be administered at the end of a tenancy:

**Return of security deposit and pet damage deposit**

**38** (1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of

- (a) the date the tenancy ends, and
- (b) the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one of the following:

- (c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;
- (d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

(2) Subsection (1) does not apply if the tenant's right to the return of a security deposit or a pet damage deposit has been extinguished under section 24 (1) *[tenant fails to participate in start of tenancy inspection]* or 36 (1) *[tenant fails to participate in end of tenancy inspection]*.

(3) A landlord may retain from a security deposit or a pet damage deposit an amount that

- (a) the director has previously ordered the tenant to pay to the landlord, and
- (b) at the end of the tenancy remains unpaid.

(4) A landlord may retain an amount from a security deposit or a pet damage deposit if,

- (a) at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant, or
- (b) after the end of the tenancy, the director orders that the landlord may retain the amount.

(5) The right of a landlord to retain all or part of a security deposit or pet damage deposit under subsection (4) (a) does not apply if the liability of the tenant is in relation to damage and the landlord's right to claim for damage against a security deposit or a pet damage deposit has been extinguished under section 24 (2) *[landlord failure to meet start of tenancy condition report requirements]* or 36 (2) *[landlord failure to meet end of tenancy condition report requirements]*.

(6) If a landlord does not comply with subsection (1), the landlord

- (a) may not make a claim against the security deposit or any pet damage deposit, and
- (b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

(7) If a landlord is entitled to retain an amount under subsection (3) or (4), a pet damage deposit may be used only for damage caused by a pet to the residential property, unless the tenant agrees otherwise.

(8) For the purposes of subsection (1) (c), the landlord must repay a deposit

- (a) in the same way as a document may be served under section 88 (c), (d) or (f) *[service of documents]*,
- (b) by giving the deposit personally to the tenant, or
- (c) by using any form of electronic
  - (i) payment to the tenant, or
  - (ii) transfer of funds to the tenant.

In this case, the Tenants did not provide their forwarding address in writing, as required by Section 38(1) of the Act. However, I find that the Landlord extinguished his right to retain all or a part of the security deposit for damage under Section 38(5) of the Act because he did not meet the end of tenancy condition report requirements. Therefore, I order the Landlord to return the security deposit of \$600.00 to the Tenants forthwith. The Landlord was advised that he still may have a claim under Section 67 of the Act.

The Tenants have been successful in their Application and I find that they entitled to recover the cost of the \$100.00 filing fee from the Landlord.

### **Conclusion**

The Tenants are hereby provided with a Monetary Order in the amount of **\$700.00**, representing return of the security deposit and recovery of the filing fee, for service upon the Landlord. This Order may be enforced in the Provincial Court of British Columbia (Small Claims Division).

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: June 12, 2018

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Residential Tenancy Branch