



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

### Dispute Codes

For the landlord: MND-S, MNDC-S, FF  
For the tenants: MNDS

### Introduction -

This hearing convened by teleconference on January 6, 2022, to deal with the parties' respective applications for dispute resolution seeking remedy under the Residential Tenancy Act (Act).

The landlord applied for compensation for alleged damage to the rental unit by the tenants, compensation for a monetary loss or other money owed, and to recover the cost of the filing fee.

The tenants applied for a return of their security deposit.

The hearing began on January 6, 2022, and all parties were in attendance. The parties were affirmed and were advised that recording of the RTB hearing is prohibited.

The parties each confirmed receipt of the other's applications and the tenants confirmed receipt of the landlord's evidence. The tenants' evidence was dealt with in the Interim Decision.

The hearing began and after 65 minutes, it was clear there was insufficient time to conclude all of the issues in dispute in the time allotted. The hearing was adjourned.

An Interim Decision was issued on January 7, 2022, in which the hearing was adjourned to a date and time set by the Residential Tenancy Branch (RTB). This Interim Decision is incorporated by reference and should be read in conjunction with this Decision.

Evidence issues were dealt with in the Interim Decision and orders were given to both parties to correct and/or submit during the period of adjournment.

Notices of the reconvened hearing were emailed to the parties on January 10, 2022, and re-sent to the landlord on January 28, 2022, via an updated email address the landlord provided to staff at the RTB.

At the reconvened hearing on April 4, 2022, the tenants attended. The landlord did not attend.

#### Preliminary and Procedural Matters-

As to the landlord's application, RTB Rules 7.1 and 7.3 apply and state:

##### **7.1 Commencement of the dispute resolution hearing**

The dispute resolution hearing will commence at the scheduled time unless otherwise set by the arbitrator.

##### **7.3 Consequences of not attending the hearing**

If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply.

Given the above, I find the landlord failed to attend the entire proceeding by failing to attend the April 4, 2022, hearing. As a result, I **dismiss the landlord's application, without leave to reapply.**

Additionally, I find the landlord failed to comply with the Interim Decision. I ordered the landlord to comply with Rule 3.7, which requires evidence to be organized, strongly recommending that a table of contents or index be included.

During the period of adjournment, the landlord submitted evidence which was not labelled or organized, and which contained a handwritten document, titled "CONTENTS". Within the contents, the landlord made further arguments, instead of it being limited to a listing of the previously submitted evidence. As a result, I would not have allowed the additional submissions by the landlord, due to their failure to comply with the Interim Decision.

The hearing proceeded on the tenants' application for dispute resolution.

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 specifically referenced by the parties and 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.

#### Issue(s) to be Decided

Are the tenants entitled to a monetary order comprised of their security deposit, doubled?

#### Background and Evidence

The tenancy began on May 1, 2018 and ended on May 31, 2021. The monthly rent was \$1,050 and the tenants paid a security deposit of \$525.00.

The tenants' monetary claim is \$1,136.61, which the tenants submitted in explanation in their application as follows:

*I completed the condition review May 31st and the (landlord) signed the condition review May 31st. She also initialed under the agreed amount (511.61). After many text messages and warning her it would double and add the 100 filing fee she told me she was not going to return the damage deposit she agreed to. +511.61 = damage deposit 525 subtract the 13.39 for damages. +525 for more then 15 day payment +100 filing fee total of 1136.61*

[Reproduced as written except for anonymizing personal information to protect privacy]

The tenant submitted that they provided their written forwarding address on the move-out condition inspection report (CIR), on May 31, 2021, the last day of the tenancy. Filed in evidence was a copy of the CIR.

The tenant confirmed that they agreed the landlord could retain the amount of \$13.39 from their security deposit, reflected on the CIR. The tenant testified that they did not agree they damaged the rental unit, but decided to accept the amount of \$13.39 on the CIR as a deduction so that the landlord would return the balance. Instead of returning the balance, the landlord filed an application for dispute resolution.

The tenant argued the landlord should have deducted \$13.39 and returned the balance. As the landlord did not, the tenants are entitled to a doubling of the security deposit, less \$13.39, according to the tenant.

### Analysis

Based on the documentary evidence and the undisputed testimony of the tenant provided during the hearing, and on the balance of probabilities, I find the following.

Under section 38(1) of the Act, a landlord is required to either repay a tenant's security deposit or to file an application for dispute resolution to retain the deposit within 15 days of the later of receiving the tenant's forwarding address in writing or at the end of a 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 her security deposit.

In this case, I find the evidence shows that the landlord complied with their obligation under the Act.

The undisputed evidence is that landlord received the tenants' written forwarding address on May 31, 2021, the last day of the tenancy, and therefore had until June 15, 2021, to file their application. The landlord's application claiming against the tenants' security deposit was filed on June 14, 2021.

As I have dismissed the landlord's application claiming against the tenants' security deposit, I find the tenants are entitled to the return of their security deposit.

I therefore **order** the landlord to return the remainder of the tenants' security deposit of \$511.61, which is the tenants security deposit of \$525 less the agreed upon deduction of \$13.39. I have not ordered the security deposit be doubled as the landlord filed their application within the required time as outlined above.

I grant the tenants recovery of their filing fee of \$100, due to their successful application.

I therefore find the tenants have established a monetary claim of \$611.61, comprised of their security deposit of \$525, less the authorized deduction of \$13.39, and the filing fee paid for this application of \$100.

I grant the tenants a monetary order in the amount of \$611.61.

Should the landlord fail to pay the tenants this amount without delay, the order must be served upon the landlord for enforcement and 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 is dismissed, without leave to reapply, due to their failure to attend the entire hearing.

The tenants' application is partially granted as I have ordered the landlord to return the tenants' security deposit of \$525, less the authorized deduction of \$13.39. I awarded the tenants recovery of their filing fee and granted the tenants a monetary order in the amount of \$611.61.

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: April 04, 2022

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Residential Tenancy Branch