



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards  
Ministry of Housing and Social Development

## Decision

### Dispute Codes:

MNSD, FF

### Introduction

This hearing was scheduled in response to the Tenants' Application for Dispute Resolution, in which the Tenants made application for a monetary Order for money owed or for compensation for damage or loss under the Residential Tenancy Act (Act), regulation or tenancy agreement, for the return of their security deposit, and to recover the filing fee from the Landlord for the cost of this Application for Dispute Resolution.

The Tenant stated that copies of the Application for Dispute Resolution and Notice of Hearing were sent to the Tenant via registered mail at the address noted on the Application, on September 19, 2008. The Tenants submitted a copy of the receipt with a tracking number. The Canada Post website shows the mail was returned to the sender on October 15, 2008. These documents are deemed to have been served in accordance with section 89 of the Act, however the Landlord did not appear.

### Issue(s) to be Decided

The issues to be decided are whether the Tenants are entitled to the return of double the security deposit they paid in relation to this tenancy Tenant and if they are entitled to recover the filing fee for the cost of this Application for Dispute Resolution.

### Background and Evidence

The Tenant stated that this tenancy ended on August 31, 2008. She stated that the Tenants paid a security deposit of \$500.00 and a pet deposit of \$250.00 on October 01, 2007. The Tenant stated that she sent her forwarding address, in writing, to the Landlord by registered mail when she mailed him her rent payment for June of 2008.

The Tenant stated that the Landlord returned a portion of their security and pet deposit, in the amount of \$548.70, on September 15, 2008. The Tenant stated that the Landlord did not indicate why he was retaining a portion of the security deposit. She stated that the Tenants did not authorize the Landlord to retain all or part of their security deposit.

## Analysis

In the absence of evidence to the contrary, I find that the Tenants paid a pet deposit and a security deposit, in the amount of \$750.00 to the Landlord. In the absence of evidence to the contrary, I find that the Landlord did not have authorization from the Tenants to retain any portion of these deposits.

Section 38(1) of the *Act* provides that within 15 days after the later of the date the tenancy ends and the date the Landlord receives the Tenant's forwarding address in writing, the Landlord must either repay the security deposit and pet damage deposit with interest to the Tenant or file an Application for Dispute Resolution claiming against the deposit.

In the present case, I find that the Landlord returned \$548.70 but retained \$201.30 without authorization from the Tenants, without filing an Application for Dispute Resolution claiming against the deposits, and without any other lawful authority. I therefore find that the Landlord must return the remaining \$201.30, plus interest on the original deposits in the amount of \$11.98.

Section 38(6) of the *Act* stipulates that a Landlord must pay the Tenants double the amount of the security deposit and pet damage deposit and may not make a claim against the deposit if the Landlord fails to comply with section 38(1) of the *Act*. I find that the Landlord has not fully complied with section 38(1) of the *Act* and must therefore pay the Tenants an additional \$750.00 for failing to comply with section 38(1).

I find that the Tenants' application has merit and that they are entitled to recover the cost of filing this Application for Dispute Resolution from the Landlord.

## Conclusion

I find that the Tenants have established a monetary claim of \$1,013.28, which is comprised of the unreturned portion of the security/pet deposits plus interest on the original amounts, in the amount of \$213.28; compensation in the amount of \$750.00 pursuant to section 38(6); and \$50.00 in compensation for the cost of filing this Application.

Based on these determinations I grant the Tenants a monetary Order in the amount of \$1,013.28. In the event that the Landlord does not voluntarily comply with this Order, it may be filed with the Province of British Columbia Small Claims Court and enforced as an Order of the Court.

Date of Decision: October 06, 2008