



# 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 dealt with the tenant's application for dispute resolution requesting double the security deposit not returned to him by the landlord and recovery of the filing fee. Both parties appeared at the hearing and had an opportunity to be heard and respond to the other party's submissions with respect to the landlord's legal right to retain the security deposit.

### Issue(s) to be Decided

1. Whether the landlord had legal right to retain part of the tenant's security deposit.
2. Award of the filing fee.

### Background and Evidence

I heard undisputed verbal testimony that the tenancy commenced November 1, 2006 and ended September 30, 2008. The tenant had paid a \$400.00 security deposit on October 7, 2006. The landlord did not prepare move-in or move-out inspection reports. The tenant did not authorize the landlord to retain any part of his security deposit in writing. The tenant provided the landlord with his forwarding address, in writing, on September 30, 2008. The landlord retained \$80.72 of the tenant's security deposit in partially refunding the tenant his security deposit. The partial refund included refund interest and was made within 15 days of the tenancy ending.

Prior to the hearing, the landlord provided evidence in respect of damages and cleaning allegedly caused by the tenant. The landlord did not file an application for dispute

resolution and I refused to hear detailed submissions concerning the alleged damages and cleaning costs. The parties were informed that this hearing was to determine the landlord's legal right to retain any part of the tenant's security deposit and that if the landlord wished to pursue a claim against the tenant the landlord would have to make a separate application. The landlord's representative did not agree with my refusal to consider the landlord's evidence in resolving the tenant's application.

### **Analysis**

Under section 38(1) of the Act, the landlord has fifteen days from the later of the day the tenancy ends or the date the landlord receives the tenant's forwarding address in writing to file an application for dispute resolution claiming against the deposit, or return the deposit plus interest to the tenant.

A landlord may retain all or part of a tenant's security deposit where the tenant authorizes the retention in writing; however, this is only permitted where the landlord has fulfilled the move-in and move-out inspection report requirements. The landlord may also retain an amount from a tenant's security deposit where the landlord has a previously ordered Monetary Order which remains unpaid at the end of the tenancy. Neither of these situations is relevant in this case and I will not consider them further. I have not heard evidence that would lead me to conclude that the tenant otherwise extinguished his right to return of his security deposit. Therefore, I find that the landlord did not have the legal right to retain any of the tenant's security deposit.

In order to comply with the Act, the landlord would have had to repay the tenant the full amount of the security deposit with interest or make an application for dispute resolution in order to obtain authorization to retain any part of the tenant's security deposit within 15 days of the tenancy ending or receiving the tenant's forwarding address in writing. Since the landlord did not repay the full amount of the tenant's security deposit or make an application to retain part of the tenant's security deposit by September 15, 2008 the landlord did not comply with section 38(1) of the Act. Accordingly, the landlord must repay the tenant double the security deposit pursuant to section 38(6) of the Act.

Therefore, the tenant has established that the landlord did not have the legal right to retain \$80.72 from his security deposit and I grant the tenant's request by ordering the landlord to pay the tenant \$161.44 (\$80.72 x 2).

As the tenant was successful with this claim, I award the filing fee to the tenant. In light of these findings, I provide the tenant with a Monetary Order in the total amount of \$211.44. The tenant must serve the enclosed Monetary Order upon the landlord and may file it in Provincial Court (Small Claims) to enforce as an Order of that court.

While I appreciate the landlord may be of the position that the tenant caused her to incur damages or loss related to cleaning the rental unit, as explained to the landlord's representative, the landlord must make an application for dispute resolution and the alleged damages or loss were not an issue for me to determine with this hearing. The landlord's representative is referred to section 62 of the Act. I must determine the matter related to the application filed. The application filed was in respect of the landlord retaining part of the tenant's security deposit without the proper authority to do so. I was able to determine whether the landlord had the authority to retain any part of the tenant's security deposit, in accordance with the requirements of section 38, without making a determination as to the amount of damages or loss incurred by the landlord, if any. Therefore, the landlord's evidence of damages or loss was not relevant for this hearing and, in accordance with Rule 8.2 of the Rules of Procedure, only relevant evidence will be heard at a proceeding. For additional reference to dispute procedures, the landlord's representative is also referred to Rules 2 and 5 of the Rules of Procedure which are located at: [www.rto.gov.bc.ca](http://www.rto.gov.bc.ca).

As the parties were informed at the hearing, the landlord has up until two years from the date the tenancy ended to make an application for dispute resolution against the tenant.

### **Conclusion**

The tenant was successful with his application and is provided a Monetary Order in the amount of \$211.44.

Dated: December 2, 2008