



# Dispute Resolution Services

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

## **DECISION AND REASONS**

Dispute Codes: MNSD & FF

### Introduction:

This hearing dealt with an application by the tenants for the return of double their security deposit plus interest. Both parties appeared for the hearing and were provided the opportunity to be heard and respond to the evidence of the other party.

### Issue to be Determined:

Are the tenants entitled to the return of double their security deposit plus interest?

### Background and Evidence:

This tenancy began on August 1, 2004 for the monthly rent of \$650.00 and a security deposit of \$325.00. The tenancy ended effective October 31, 2008. Although the parties conducted inspections of the rental unit at the beginning and end of the tenancy, the inspections were not in writing.

The tenants submit that the landlord failed to return the security deposit within the 15 days provided under the *Act*. However, the tenants acknowledge that they did not provide the landlord with a forwarding address. The tenants argue that the landlord's agent was aware of their current address since he came to the new residence a few days after the tenancy ended to pick up the keys to the rental unit.

The landlord sent the tenants a letter to their former address indicating that she would be deducting a sum from the security deposit related to loss of a fence that was there prior to the start of the tenancy. The landlord enclosed a cheque for the partial return of the security deposit. The tenants received this document and responded in writing on November 20, 2008 indicating that they did not agree with the landlord's deduction. The tenant's provided in this letter their new address in writing.

### Analysis:

The relevant sections of the *Act* applicable to this application include sections 23, 24, 35, 36 and 38. Sections 23 to 36 deal with the obligations and consequences pertaining to the conduct of move-in and move-out inspections. Section 38 provides the requirements and obligations respecting the return of the security deposit and the landlord's requirements to retain the security deposit.

Section 38(1) sets up the time frame in which a landlord must return the security deposit or file an application for dispute resolution to retain the security deposit. The *Act* allows for a 15 day period which is initiated either at the end of the tenancy or after the landlord receives the tenant's forwarding address in writing.

I accept the landlord's argument that forwarding address in writing was not provided. From the evidence I accept that the tenants did not provide a forwarding address until their letter of November 20, 2008. This letter is deemed to have been received by the landlord on the 5<sup>th</sup> day after it was mailed. While I have no direct evidence as to when the tenants sent this letter I will assume it was sent on November 20<sup>th</sup>, 2008 and deem it received by the landlord on November 25<sup>th</sup>, 2008. The 15 day timeline was therefore initiated as of the 25<sup>th</sup>. The tenants filed this application on December 4, 2008 which was before the 15 day time period under section 38(1) was completed.

As a result, I find that the tenants filed for compensation pursuant to section 38 before the right to this entitlement was established. I deny the tenants' claim for the return of double their security deposit as they failed to provide a forwarding address in writing until November 25, 2008 and filed this application before the required 15 days had passed.

However, I accept that the landlord failed to comply with sections 23 to 36 of the *Act* and therefore extinguished any right to retain against the tenants' security deposit. I find that the tenants are entitled to the return of their security deposit plus interest of \$336.51 plus the recovery of the \$50.00 filing fee paid for this application.

Conclusion:

I grant the tenants a monetary Order for the sum of **\$386.51** comprised of the return of their security deposit plus interest and recovery of the \$50.00 filing fee paid for this application. This Order may be filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

Dated January 26, 2009.

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Dispute Resolution Officer