



# **Dispute Resolution Services**

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

## **REVIEW HEARING DECISION**

**Dispute Codes:** MNSD, MNDC and FF

### **Introduction**

This application was brought by the tenant seeking return of her security deposit in double on the claim that the landlord failed to return it within 15 days of the end of the tenancy and receipt of her forwarding address. The tenant also seeks to recover the filing fee for this proceeding from the landlord and an NSF fee incurred when the landlord cashed her last month's rent cheque after she had advised him not to do so.

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

This matter requires a decision on whether the tenant has proven that she provided the landlord with a forwarding address at the end of the tenancy and whether she has proven she advised the landlord not to cash the final cheque and the charge claimed.

### **Background and Evidence**

This tenancy began June 1, 2008 and ended on October 31, 2008. Rent was \$600 per month and the landlord holds a security deposit of \$300 paid on May 4, 2008.

During the hearing, the tenant gave evidence that she had been served with the Notice to End Tenancy for landlord use on September 18, 2008. Such notice, given under section 49 of the Act, requires that the tenant be given two months notice. Section 50 then entitles the tenant to the last month's rent free and the right to end the tenancy earlier with 10 days notice to the landlord. The notice had set an end of tenancy date of November 17, 2008 which would have been corrected to November 30, 2008.

The tenant had submitted into evidence a letter to the landlord dated September 23, 2008 acknowledging the Notice to End and advising that she had found new accommodation for November 1, 2008 and asked that he not cash the October 1, 2008 post-dated cheque she had provided for the October rent.

She also submitted copy of her letter to the landlord dated October 31, 2008 providing a forwarding address, returning the keys to the rental unit and reminding the landlord of the need to return the security deposit within 15 days.

The tenant also submitted into evidence a copy of her cheque #91 dated October 1, 2008 and a copy of her bank statement of October 31, 2008 showing an NSF fee charged on her account on October 16, 2008 against cheque #91.

The tenant suggested that the Notice to End may have been retaliation for her having given verification to a police officer on another tenant's complaint against the landlord.

The landlord stated that he had not returned the damage deposit because there had been some damage to the rental unit and because the tenant had not had to pay rent for October.

## Analysis

Section 38(1) one of the *Act* states that, unless the tenant consents otherwise, within 15 days of the latter of the end of the tenancy or receipt of the tenant's forwarding address, the landlord must return the security deposits plus interest or make application for dispute resolution to claim it .

If the landlord does neither, section 38(6) states that the landlord must return double the amount of the deposits.

I find that the landlord must return the security deposit and pet damage deposit in double with interest on the initial deposits. In addition, I find that the landlord was advised by the tenant's letter of September 23, 2008 not to cash the post-dated cheque for October and he is, therefore, responsible for the \$40 NSF fee she was charged as a result.

Having found that the tenant has succeeded in her application, I find that she should recover the filing fee for this proceeding from the landlord.

Thus, I find that the tenant is entitled to a Monetary Order calculated as follows:

To return security deposit	\$300.00
Interest (May 4, 2008 to date)	2.98
To double security deposit	300.00
NSF fee	40.00
Filing fee	<u>50.00</u>
<b>TOTAL</b>	<b>\$692.98</b>

**Conclusion**

Thus, the tenant's copy of this decision is accompanied by a Monetary Order for \$692.98, enforceable through the Provincial Court of British Columbia, for service on the landlord.

February 4, 2009

---

Dispute Resolution Officer