



# Dispute Resolution Services

Residential Tenancy Branch  
Ministry of Housing and Social Development

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## DECISION

### **Dispute Codes:**

MNSD

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### **Introduction**

I have been delegated the authority under Section 9.1 of the *Residential Tenancy Act* (the “Act”) to hear this matter and decide the issues.

I reviewed the evidence on the case file prior to the Hearing. The Tenant gave affirmed evidence and this matter proceeded on its merits.

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

This is the Tenant’s application for a Monetary Order for double the security deposit from the Landlord.

- (1) Does the Act have jurisdiction over this matter?
- (2) Was there a Tenancy Agreement?
- (3) Is the Tenant entitled to a monetary order under Section 38(6) of the Act?

### **Background and Evidence**

#### Tenant’s evidence

The Tenant provided the following evidence, orally and in her evidence package:

- The Tenant lived in a bedroom at the rental unit and shared the kitchen and bathroom with the Landlord. The Landlord does not own the rental unit.
- There was no written Tenancy Agreement.
- The Tenant paid the Landlord directly every month.
- The Tenant mailed the Landlord a copy of the Application for Dispute Resolution, along with the hearing package, via registered mail to the address where the Landlord carries on business as a landlord, on January 20, 2009. The Tenant provided the original receipt for the registered mail package.
- On December 29, 2008, the Tenant provided the Landlord notice in writing of her forwarding address. The Landlord did not return the security deposit within 15 days of the end of tenancy or the Landlord's receipt of the Tenant's forwarding address. The Landlord did not make an application claiming against the security deposit or pet damage deposit within 15 days of the end of tenancy or the date the Tenant provided the Landlord with written notification of her forwarding address.
- The tenancy started on September 19, 2008. The tenancy ended December 31, 2008. The Tenant moved out of the rental unit over the Christmas holidays. The Tenant was not in arrears for rent.
- The Landlord and Tenants did not meet together to perform a move-out inspection.
- The Tenants paid a security deposit to the Landlord's agents in the amount of \$190.00 on September 19, 2008.

### **Analysis**

The Act defines a "tenancy agreement" as follows:

**"tenancy agreement"** means an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a rental unit, use of common areas and services and facilities, and includes a licence to occupy a rental unit;

The Act defines a “landlord” as follows:

**"landlord"**, in relation to a rental unit, includes any of the following:

- (a) the owner of the rental unit, the owner's agent or another person who, on behalf of the landlord,
  - (i) permits occupation of the rental unit under a tenancy agreement, or
  - (ii) exercises powers and performs duties under this Act, the tenancy agreement or a service agreement;
- (b) the heirs, assigns, personal representatives and successors in title to a person referred to in paragraph (a);
- (c) a person, other than a tenant occupying the rental unit, who
  - (i) is entitled to possession of the rental unit, and
  - (ii) exercises any of the rights of a landlord under a tenancy agreement or this Act in relation to the rental unit;
- (d) a former landlord, when the context requires this;

Section 4(c) of the Act states:

**What this Act does not apply to**

**4** This Act does not apply to

- (c) living accommodation in which the tenant shares bathroom or kitchen facilities with the owner of that accommodation,

I find that the Landlord is a landlord, by definition. The Tenant paid rent to the Landlord and provided the Landlord with a security deposit. I therefore find that there was a verbal tenancy agreement in place. The Landlord is not the owner of the rental unit, and therefore the Act does apply to this rental unit.

I accept the Tenant's testimony that she mailed the Landlord a copy of her application and hearing package by registered mail on January 20, 2009. Section 90 of the Act deems that documents served in this fashion are received five days after mailing the documents. Therefore, the Landlord is deemed to have been served on January 25, 2009.

This Hearing was scheduled for 10:30 a.m., March 23, 2009, via telephone conference. The Hearing concluded at 10:45 a.m. The Landlord did not sign in to the Hearing, although duly served.

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** repay any security deposit or pet damage deposit to the tenant with interest, or make an application for dispute resolution claiming against the security deposit or pet damage deposit.

Section 38(6) of the Act provides that if a landlord does not comply with Section 38(1) of the Act, the landlord **must** pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

The Tenant has been successful in her application and is entitled to recover the filing fee.

I grant the Tenant a monetary order in the amount of \$430.81, calculated as follows:

Double the security deposit	\$380.00
Accrued interest on the \$190.00 security deposit	\$.81
Recovery of the filing fee	<u>\$50.00</u>

Balance owing by the Landlord to the Tenants	\$430.81
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**Conclusion**

Pursuant to Sections 38(6) and 72(1) of the Act, I grant the Tenant a monetary order for \$430.81 against the Landlord. This order must be served on the Landlord and may be filed in the Provincial Court of British Columbia (Small Claims) and enforced as an order of that Court.

March 23, 2009

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