



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing and Social Development

## **DECISION**

### Dispute Codes:

MNSD and FF

### Introduction

This hearing was in response to an Application for Dispute Resolution, in which the Tenants applied for the return of double their security deposit and to recover the filing fee from the Landlord for the cost of filing this application.

The Tenant #1 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 February 13, 2009. A copy of a Canada Post receipt, with a tracking number was provided. The Canada Post website shows the mail was delivered to the Landlord on February 17, 2009. These documents are deemed to have been served in accordance with section 89 of the *Residential Tenancy Act (Act)*, however the Landlord did not appear at the hearing.

### Issue(s) to be Decided

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

### Background and Evidence

The Tenant#1 stated that this tenancy began on September 01, 2008; that the Tenants paid a security deposit of \$450.00 on, or about, September 01, 2008; that the Tenants did not authorize the Landlord to retain the security deposit; that the Landlord did not return any portion of the security deposit; and that the Landlord did not file an Application for Dispute Resolution claiming against the security deposit.

The Tenant #1 stated that when the Tenants vacated the rental unit on October 21, 2008, the Landlord gave him a hand-written note, in which the Landlord stated, in part, that he will return the security deposit after inspection and necessary repairs. A copy of that note was submitted in evidence by the Tenant.

The Tenant #1 stated that he then wrote his forwarding address on the back of that note and immediately gave it back to the Landlord, at which time he observed the Landlord

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transfer the information to a book with a black cover. He stated that the Landlord returned the note to him after recording his forwarding address.

The Tenant #1 submitted a copy of an email, dated December 30, 2008, in which he advised the Landlord of his forwarding address. He submitted no evidence to show that the Landlord received this email.

## Analysis

In the absence of evidence to the contrary, I find that the Tenants paid a security deposit of \$450.00 on, or about, September 01, 2008; that the Landlord did not return any portion of the security deposit; that the Tenant did not authorize the Landlord to retain any portion of the security deposit; that the Landlord did not file an Application for Dispute Resolution claiming against the deposit; that the Landlord did not have authorization to retain any portion of it; that the tenancy ended on October 21, 2008; and that the Tenants provided their forwarding address to the Landlord, in writing, on October 21, 2008.

Section 38(1) of the *Act* stipulates 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/or pet damage deposit plus interest or make an application for dispute resolution claiming against the deposits. In the circumstances before me, I find that the Landlord failed to comply with section 38(1), as the Landlord did not repay the security deposit or file an Application for Dispute Resolution.

Section 38(6) of the *Act* stipulates that if a landlord does not comply with subsection 38(1), the Landlord must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable. As I have found that the Landlord did not comply with section 38(1) of the *Act*, I find that the Landlord must pay the Tenant double the security deposit that was paid, plus interest on the original amount.

## Conclusion

I find that the Tenant has established a monetary claim of \$952.25, which is comprised of the return of the original security deposit of \$450.00; \$450.00 for failing to comply with section 38(1) of the *Act*; \$2.25 in interest on the original amount of the security deposit, and \$50.00 as compensation for the cost of filing this Application for Dispute Resolution, and I am issuing a monetary Order in that amount. 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 that Court.



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This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: April 09, 2009.

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Dispute Resolution Officer