



# Dispute Resolution Services

Residential Tenancy Branch  
Ministry of Housing and Social Development

## **Review Hearing Decision**

### **Dispute Codes:**

MNSD          Monetary Order for the Return of the Security Deposit and Pet Damage Deposit

### **Introduction**

This Dispute Resolution hearing was originally convened on February 24, 2009 to deal with an Application by the tenant for an order for the return of the security deposit and the pet damage deposit retained by the landlord. The tenant did not attend and the application was dismissed. The tenant applied for Review Consideration on the basis that the tenant could not attend due to circumstance that could not be anticipated and were beyond the tenant's control. In a review consideration decision dated March 17, 2009 the tenant/applicant's request for a review hearing to be held face-to-face was granted.

The review hearing was held at Victoria. However, although a face-to-face hearing was scheduled at the tenant's request, neither party appeared in person. One of the two tenants and the landlord participated in the hearing by telephone. Both parties gave testimony.

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

The tenant was seeking to receive a monetary order for the return of the security deposit that the tenant considers as having been wrongfully retained by the landlord.

The issues to be determined based on the testimony and the evidence are:

- Whether the tenant is entitled to the return of the security deposit pursuant to section 38 of the Act. This determination is dependant upon the following:
  - Did the tenant pay a security deposit?

- Did the tenant furnish a forwarding address in writing to the landlord?
- Did the tenant provide written consent to the landlord permitting the landlord to retain the security deposit or any portion of the deposit at the end of the tenancy?
- Did the landlord make application to retain the security deposit for damages or loss within 15 days of the end of the tenancy or the receipt of the forwarding address?

The burden of proof regarding the right to retain the security deposit is on the respondent.

### **Background and Evidence**

The tenancy began on March 13, 2008 as a fixed term that would end on October 31, 2008, with rent set at \$850.00 per month due on the 15<sup>th</sup> day of each month. A security deposit of \$425.00 was paid. A copy of the tenancy Agreement was in evidence. The tenant testified that the tenancy ended on October 1, 2008. The tenant submitted into evidence a copy of a letter dated August 31, 2008 advising the landlord that the tenant would be vacating as of October 31, 2008 and included the tenant's forwarding address for the return of the security deposit. The landlord had provided the tenant with a cheque for the security deposit dated October 21, 2009 in the amount of \$425.00. The tenant testified that the tenant was unable to cash the cheque as a "stop payment" had been placed on the cheque by the landlord.

The land lord submitted a written statement testifying that damage was done to the unit and that the cheque for the return of the security deposit was cancelled because the tenant's notice to vacate was not sufficient. The landlord testified that the tenant ended the tenancy on October 1, 2008 but the rent was due on the 15<sup>th</sup> of the month and a one- month notice would only be valid if it ended the tenancy as of the 15<sup>th</sup> of the month. The landlord testified that the tenant failed to pay rent for one month and owed \$850.00 in rental arrears. The landlord also testified that the tenants violated other terms of the tenancy agreement during the tenancy and noted that the unit was not left in a clean condition.

The landlord stated that the review consideration decision rendered on March 17, 2009 on the tenant's application for a re-hearing was unfair. The landlord took issue with the fact that a re-hearing was granted on the basis that the tenant was medically unable to participate in the original telephone conference hearing held on February 24, 2009, yet nonetheless, one of the tenants has now managed to attend by telephone.

**Analysis : Claim for Return of Security Deposit**

In regards to the return of the security deposit and pet damage deposit, I find that section 38 of the Act is clear on this issue. The Act states that the landlord can retain a security deposit if the tenant give written permission at the end of the tenancy. If the permission is not in written form and signed by the tenant, then the landlord's right to merely keep the deposit does not exist.

However, a landlord could be able to retain the deposit to satisfy a liability or obligation of the tenant only if, after the end of the tenancy, the landlord has made an application for dispute resolution and successfully obtains an order retain the amount. However, in order to make a claim against the deposit , the landlord's application for dispute resolution must be filed within 15 days after the end of the tenancy and the date that the forwarding address was received, which ever is later. Based on the evidence and the testimony, I find that the tenant did not give the landlord written permission to keep the deposit, nor did the landlord make application for an order to keep the deposit within the time permitted to do so.

Section 38(6) provides that , if a landlord does not comply with the Act by refunding the deposit owed or making application to retain it within 15 days, the landlord may not make a claim against the security deposit, and must pay the tenant double the amount of the security deposit.

In regards to the landlord's own claim for damages, rent owed and the end date provided by the tenant to vacate, I was not able to hear nor consider the landlord's claim against the tenant during these proceeding. This hearing was convened to deal with the *tenant's* application under section 38 of the Act. The landlord did not make a cross application. That being said, I must point out that the landlord is at liberty to make

a separate application to claim damages if the landlord feels that compensation is warranted pursuant to section 67 of the Act.

In the matter before me, however, I find that under section 38, the tenant is entitled to be paid double the portion of the security deposit or \$425.00 that was wrongfully retained by the landlord, in the amount of \$850.00 plus interest of \$5.12.

In regards to the landlord's complaint about the outcome of the Review Consideration and the decision issued on March 17, 2009, this matter is not the subject of this hearing and has no bearing on the matter before me at present. In any case, a Dispute Resolution Officer has no authority to reconsider any previous findings. The only avenue to pursue a challenge of a previous dispute resolution hearing would be through judicial review through the Supreme Court of British Columbia.

### **Conclusion**

Based on the testimony and evidence presented during these proceedings, I find that the tenant is entitled to compensation of \$855.12 and hereby issue a monetary order for this amount in favour of the tenant. This order must be served on the Respondent and may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

May 8, 2009

Date of Decision

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Dispute Resolution Officer