



# 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 Tenant applied for the return of double his security deposit and to recover the filing fee from the Landlord for the cost of filing this application.

Both parties were represented at the hearing. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present relevant oral evidence, to ask relevant questions, and to make relevant submissions.

### Issue(s) to be Decided

The issue to be decided is whether the Tenant is 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 Agent for the Landlord and the Tenant agree that this tenancy ended on February 28, 2009; that the Tenant paid a security deposit of \$440.00 on October 01, 2005; that the Tenant authorized the Landlord to retain \$70.00 of the security deposit for carpet cleaning; and that the Landlord did not file an Application for Dispute Resolution claiming against remainder of the security deposit.

The Agent for the Landlord and the Tenant agree that a forwarding address for the Tenant, in writing, was personally given to the Agent for the Landlord on February 28, 2009.

The Agent for the Landlord stated that she sent a form to head office instructing them to return the remainder of the security deposit to the Tenant. She stated that she contacted head office on March 12, 2009 after she learned from the Tenant that he had not received payment for the security deposit, at which time the head office advised her that a cheque had been mailed on March 12, 2009.

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The Agent for the Landlord was unable to provide any details regarding the return of the security deposit, as she is not the person who returned the deposit. The Landlord submitted no documentary evidence, such as a cheque stub, to show that they made an attempt to return the remainder of the security deposit. The Landlord submitted no evidence from the person who allegedly returned the remainder of the security deposit to show that the deposit was mailed to the Tenant.

The Tenant stated that the remainder of his security deposit has not been returned to him.

## Analysis

The evidence shows that the Tenant paid a security deposit of \$440.00 on October 01, 2005; that the Tenant authorized the Landlord to retain \$70.00 from the security deposit; and that the Landlord did not file an Application for Dispute Resolution claiming against the remainder of the deposit.

Based on the mutual agreement of the parties, I find that the Tenant is entitled to the return of \$370.00 from his security deposit plus \$15.58 in interest on the original amount.

In the absence of evidence to the contrary, I accept that the Tenant has not received a cheque for the remainder of his security deposit.

Although I accept that the Agent for the Landlord advised that the Landlord that the Tenant was entitled to the return of a portion of his security deposit, and I accept that someone at head office told the Agent for the Landlord that a payment had been made, I find that the Landlord submitted insufficient evidence to establish that a payment had been attempted. In reaching this conclusion, I was strongly influenced by the absence of any documentary evidence that indicates that a cheque had been issued. I was also influenced by the absence of evidence from the Landlord's employee who actually attempted the payment.

In these circumstances, I find that Agent for the Landlord's statement that she had been told that a payment had been made is insufficient proof of a payment being attempted.

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



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38(1), as the Landlord has not established that the security deposit was repaid or that an Application for Dispute Resolution was filed by the Landlord.

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 establish that they complied 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 \$875.58, which is comprised of the return of the remainder of the security deposit, in the amount of \$370.00, the equivalent of the security deposit pursuant to section 38(6) of the *Act*, which is \$440.00, \$15.58 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.

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: June 18, 2009.

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Dispute Resolution Officer