



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Ministry of Housing and Social Development

## DECISION

### Dispute Codes:

MNSD, MNDC, and FF

### Introduction

This hearing was in response to an Application for Dispute Resolution, in which the Tenant applied for the return of double her security deposit and to recover the filing fee from the Landlord for the cost of filing this application. It is clear from information contained on the application form that the Tenant is also seeking a monetary for money owed or compensation for damage or loss, and her Application was amended accordingly.

The Tenant attended the hearing on May 14, 2009, but the Landlord did not. The Tenant stated that she sent copies of the Application for Dispute Resolution and Notice of Hearing to the Landlord via courier, although she was unable to recall the name of the courier she used nor did she provide a receipt to establish that the package was delivered. I find that these documents have not been served in accordance with section 89 of the *Residential Tenancy Act (Act)*. The Tenant requested, and was granted, an adjournment to provide her with the opportunity to properly serve the Landlord with the Notice of Hearing and Dispute Resolution Package.

The hearing from May 14, 2009 was reconvened on June 23, 2009. Both parties were represented at the hearing on June 23, 2009. 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 to me.

### 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, to compensation for oil that was left in the oil tank, and to recover the cost of filing this Application for Dispute Resolution.

## Background and Evidence

The Landlords and the Tenant agree that this tenancy began on September 01, 2008; that it ended on December 31, 2008; that the Tenant was required to pay monthly rent of \$1,400.00; and that the Tenant paid a security deposit of \$700.00 on August 15, 2008.

The Landlords and the Tenant agree that the Tenant left heating oil in the oil tank at the end of the tenancy, at which time it was determined that the value of the oil in the tank was \$373.05. The parties had previously agreed that the Landlords would reimburse the Tenant for 60% of the remaining oil, which is \$223.83.

The Tenant stated that she wrote her forwarding address on the bottom of the oil tank reading. She stated that she personally delivered the oil tank reading and her forwarding address sometime during the first week of January, 2009, although she can not recall the exact date.

The female Landlord acknowledged receiving the oil tank reading and forwarding address from the Tenant in January. Although she cannot recall the exact date it was received, she believes she received it no later than January 15, 2009.

The male Landlord stated that at the end of the tenancy they determined that they owed the Tenant \$700.00 for the return of her security deposit plus \$223.83 to purchase the Tenant's portion of the oil in the tank. He stated that they believed the Tenant owed \$362.08 for utilities costs so they deducted this amount from the \$923.83 they owed the Tenant and returned the difference to her, which they calculated to be \$561.75.

The Landlords and the Tenant agree that the Landlords sent the Tenant a cheque in the amount of \$561.75 on, or about, February 12, 2009. The Tenant stated that the cheque was attached to other documents sent to her by the Landlords and she did not locate the cheque until after she filed her Application for Dispute Resolution.

The Landlords stated that, due to a miscommunication between the Landlords, they were unaware that the Tenant had made a payment towards her utility costs prior to the end of the tenancy. After receiving a proof of payment from the Tenant, the Landlords sent her another cheque, in the amount of \$185.00, on March 03, 2009.

The Landlords and the Tenants agree that the Tenant did not authorize the Landlords to retain any portion of her security deposit and that the Landlord did not file an Application for Dispute Resolution claiming against the security deposit.

## Analysis

The evidence shows that the Tenant paid a security deposit of \$700.00 on August 15, 2008; that this tenancy ended on December 31, 2008; that the Tenant did not authorize the Landlords to retain any portion of the security deposit; that the Landlord did not file an Application for Dispute Resolution claiming against the deposit; and that the Landlord did not have authorization to retain any portion of it.

As the Tenant was not sure of the date she provided the Landlord with her forwarding address in writing, I accept the Landlord's estimate that the address was received, in writing, on, or about, January 15, 2009.

In the absence of evidence to the contrary, I accept that the Landlords gave a cheque to the Tenant on, or about, February 12, 2009, in the amount of \$561.75. I find that this cheque represented a partial return of the Tenant's security deposit.

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 Landlords did not repay the entire security deposit and they did not file an Application for Dispute Resolution claiming to keep any portion of the security deposit.

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 is obligated to pay the Tenant double the security deposit that was paid, which is \$1,400.00, plus \$3.99 in interest on the original amount.

As the parties had agreed that the Landlords owe the Tenant \$223.83 for oil that was left in the oil tank, I find that the Landlords are obligated to pay this amount to the Tenant.

I have made no finding in relation to monies owed to the Landlord for utilities, as the Landlords have not filed an Application for Dispute Resolution seeking compensation for unpaid utilities. The Landlords retain the right file an Application for Dispute Resolution seeking compensation for unpaid utilities in the event that the parties are unable to reach a settlement on the issue of utilities.



# Dispute Resolution Services

Page: 4

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## Conclusion

I find that the Tenant has established a monetary claim of \$1,677.82, which is comprised of double the security deposit, \$3.99 in interest on the original amount of the security deposit, \$223.83 for oil, and \$50.00 as compensation for the cost of filing this Application for Dispute Resolution.

The evidence shows that the Landlord has already paid the Tenant \$746.75 in partial satisfaction of this monetary claim. I am therefore issuing a monetary Order for the difference of \$931.07. 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 23, 2009.

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Dispute Resolution Officer