



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing and Social Development

## DECISION

### Dispute Codes:

MNSD, FF

### Introduction

This hearing was scheduled in response to the Tenant's Application for Dispute Resolution, in which the Tenants have made application for a monetary Order for return of double the security deposit and to recover the filing fee from the Landlord for the cost of this Application for Dispute Resolution.

Both parties were present at the hearing. At the start of the hearing I introduced myself, the Application for Dispute Resolution was reviewed, the hearing process was explained to the parties and the parties were provided an opportunity to ask questions in relation to the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present oral evidence, to cross-examine the other party, and to make submissions during the hearing.

### Issue(s) to be Decided

Are the Tenants entitled to return of double the security deposit paid?

Are the Tenants entitled to filing fee costs?

### Background and Evidence

The tenancy commenced in February 2005 and in March 2007 the Tenants moved to a different rental suite. On March 7, 2007 the original deposit paid by the Tenants was returned to them.

On March 1, 2007 the parties signed a new tenancy agreement, a copy of which was submitted as evidence. The first page of the tenancy agreement indicates a deposit of \$463.50 is to be paid, but the date is not notated. Section 42 of the tenancy agreement includes a notation which states "sec. dep. pd. by (Tenant's name).)" This section of the agreement is initialed by the Landlord and the Tenant.

The Tenants agreed with the Landlord's testimony that there was some confusion on their part in relation to repayment of the original deposit. During the hearing the parties agreed that throughout this four year tenancy the Tenants made their rent payments in cash and that receipts were never issued by the Landlord. The Tenants testified that they did pay the deposit, in cash, to the residential manager, but they do not recall the specific date this occurred. The Tenants stated they are relying upon section 42 of the

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tenancy agreement signed on March 1, 2007 and state that this payment was made in cash to the Residential Manager who always accepted their cash rent payments.

The Landlord's evidence indicates that on May 25, 2009 they received a written request and forwarding address from the Tenant's, requesting return of the 2007 deposit paid. The Landlord stated that they have no record of this deposit having been paid; that their ledger and accounting systems do not reflect this payment. The Landlord stated that they asked the Tenants to provide some evidence of this payment but that the Tenants have not done so. The Landlord testified that the Tenants were to pay the deposit on March 1, 2007 but they were given an extension to allow time for the return of their previous deposit refund. The Landlord records indicate the original deposit refund was issued on February 28, 2007. The Landlord stated that the tenancy agreement was pre-filled as showing payment, but that at the time of signing the agreement the tenants had yet to make the deposit payment.

A move-in and move-out condition inspection was completed for the first rental unit. I have no evidence before me that condition inspection reports were completed in March 2007. The Tenants testified that when they moved out in April 2009 they thoroughly cleaned the rental unit.

## Analysis

Section 38(1) of the Act determines that the Landlord must, within 15 days after the later of the date the tenancy ends and the date the Landlord received the Tenant's forwarding address in writing, repay the deposit or make an application for dispute resolution claiming against the deposit. Section 38(6) of the Act provides:

- (6) If a landlord does not comply with subsection (1), the landlord
  - (a) may not make a claim against the security deposit or any pet damage deposit, and
  - (b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

(Emphasis added)

I have no evidence before me that a move-in condition inspect or move-out condition inspection was completed as required by the Act or that there was any dispute over the condition of the rental unit. The Landlord has confirmed that cash payments made throughout this tenancy were not accompanied by receipts and that their accounting records should be relied upon to determine the lack of payment of the March 2007 deposit.

Section 26(2) of the Act requires a Landlord to issue receipts for any cash payment made by a Tenant. I find that, in the absence of any receipts for cash payments made, that the Tenants did pay the deposit owed. I also make this finding based upon the notation included in section 42 of the tenancy agreement, which was initialed by both

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parties, indicating payment of the deposit owed. I find this notation has more weight than the absence of a recorded payment date on the first page of the tenancy agreement. I have rejected the Landlord's testimony that the tenancy agreement was pre-filled to show payment and find that it would be unreasonable to accept that the Landlord would notate and initial payment if it had not been made by the Tenants.

Therefore, I find that the Tenants are entitled to return of double the \$463.50 deposit paid to the Landlord.

I find that the Tenant's application has merit, and I find that the Tenants are entitled to recover the filing fee from the Landlord for the cost of this Application for Dispute Resolution.

## Conclusion

I find that the Tenants have established a monetary claim, in the amount of **\$989.97**, which is comprised of double the deposit in the sum of \$927.00, accrued interest in the sum of \$12.97 and \$50.00 in compensation for the filing fee paid by the Tenants for this Application for Dispute Resolution.

Based on these determinations I grant the Tenants a monetary Order for \$989.97. In the event that the Landlord does not comply with this Order, it may be served on the Landlord, 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: September 29, 2009.

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Dispute Resolution Officer