



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing and Social Development

## **DECISION**

Dispute Codes      MNSD, FF

### Introduction

This hearing dealt with the tenant's application for return of the security deposit and recovery of the filing fee. Both parties appeared at the hearing and were provided the opportunity to be heard, respond to other party's submissions and settle this dispute.

### Issue(s) to be Decided

1. Whether the landlord had the legal right to retain the tenant's security deposit.
2. Whether the landlord is obligated to pay the tenant double the security deposit.
3. Mutual agreement between parties.
4. Award of the filing fee.

### Background and Evidence

Upon consideration of all the evidence before me, I find that the tenancy commenced September 1, 2008 and ended at the end of November 2008. The tenant had paid a \$650.00 security deposit at the commencement of the tenancy. The tenant did not give the landlord written authorization to retain the security deposit and the landlord has not returned the security deposit or made application to retain it. The tenant maintained that she phoned the landlord about the security deposit in January 2009 and sent a letter to the landlord in April or May 2009 to request return of the security deposit in writing and provide a written forwarding address. The landlord was of the position that he suffered a loss of rent because the tenant gave inadequate notice to end tenancy and has retained the security deposit to offset those losses.

A mutual resolution to this dispute was facilitated during the hearing and the parties agreed upon the following terms:

1. The landlord will return the tenant's security deposit and filing fee, totaling \$700.00, by placing it in the mail no later than September 30, 2009.
2. The tenant waives her right to return of double the security deposit.
3. The landlord agrees to not make any future claim application against the tenant for loss of rent.

## Analysis

Under section 38(1) of the Act, the landlord has fifteen days from the later of the day the tenancy ends or the date the landlord receives the tenant's forwarding address in writing to file an application claiming against the deposit, or return the deposit to the tenant. If the landlord fails to comply with section 38(1) then section 38(6) of the Act requires the landlord to pay the tenant double the security deposit. In this case, the tenant did not apply for return of double; however, the Act requires the landlord pay the tenant double unless the tenant expressly waives the right to receive double.

Upon consideration of all the testimony, I am satisfied the tenant was entitled to return of double the security deposit but the tenant has waived that right in return for the landlord's agreement to pay the tenant the amount of the original security deposit plus the filing fee by the end of September 30, 2009. In recognition of this agreement reached between the parties, I provide the tenant with a Monetary Order in the amount of \$700.00 to enforce against the landlord if the landlord does not pay \$700.00 to the tenant as agreed. I further provide the tenant with leave to reapply for dispute resolution for the portion of the security deposit (\$650.00) waived by the tenant during



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this hearing if the landlord does not mail the security deposit to the tenant by September 30, 2009.

To enforce the enclosed Monetary Order, the tenant must serve the enclosed Monetary Order upon the landlord and may file it in Provincial Court (Small Claims) to enforce as an Order of that court.

From the testimony, it is apparent to me that both parties could benefit from understanding their rights and obligations under the Act and I enclosed for each party a copy of *A Guide for Landlords and Tenants in British Columbia*.

## Conclusion

The tenant is provided a Monetary Order of \$700.00 in recognition of a mutual agreement reached between the parties. The tenant is at liberty to reapply for dispute resolution if the landlord does not mail \$700.00 to the tenant by September 30, 2009.

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 24, 2009.

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Dispute Resolution Officer