



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards  
Ministry of Housing and Social Development

## **DECISION AND REASONS**

**Dispute Codes:** MNSD

### **Introduction**

This hearing was convened upon the application of the tenant seeking recovery of a security deposit.

Both parties appeared at the hearing and gave evidence under oath.

### **Issue**

Is the tenant entitled to recover her security deposit?

### **Summary of Background**

The tenant testified that she paid a deposit of \$275.00 on February 11, 2009. The tenant says that the tenancy did not actually commence and, on April 7, 2009, she provided her forwarding address to the landlord and requested the return of her security deposit. The tenant provided a copy of the letter she provided to the landlord seeking return of the deposit.

The landlord testified that the deposit which the tenant calls a “security deposit” is not a security deposit but a non-refundable application fee. The landlord says that this is evident because the deposit would have been \$525.00 based on the \$1,050.00 rent payable for the suite. Further the landlord submitted an “Application for Rental Accommodation” which states “Deposit is non-refundable upon approval of application by Landlord.” The landlord submits that the application was approved on February 11, 2009 and the landlord held the rental unit for the tenant. On April 3, 2009 the tenant called advising that she did not want the rental unit and requesting the return of her deposit. The landlord testified that she explained to the tenant that her deposit was non-refundable because her application had been approved and the suite had been held for her for the past 2 months. The landlord testified that on April 7, 2009 a letter was dropped off at the landlord’s office. The letter was written by the tenant requesting the return of her deposit. The landlord testified that they explained to the tenant again that the deposit was not-refundable. The landlord testified that the landlord has also suffered a 2 week loss of revenue for the apartment because they did not security a new tenant until May 15, 2009.

### **Findings**

At Section 5 the *Residential Tenancy Act* states:

**5** (1) Landlords and tenants may not avoid or contract out of this Act or the regulations.

(2) Any attempt to avoid or contract out of this Act or the regulations is of no effect

At Section 15 the Act states:

**15** A landlord must not charge a person anything for

- (a) accepting an application for a tenancy,
- (b) processing the application,
- (c) investigating the applicant's suitability as a tenant, or
- (d) accepting the person as a tenant.

At Section 17 the Act says:

**17** A landlord may require, in accordance with this Act and the regulations, a tenant to pay a security deposit as a condition of entering into a tenancy agreement or as a term of a tenancy agreement.

A landlord may not contract contrary to the Act. The Act says a landlord may not change fees. Further, with the exception of a pet deposit, the Act says the only deposit a landlord may require is a security deposit.

The evidence of the landlord is that the tenant paid a \$275.00 "application fee". As application fees are not allowable under the Act and the only deposit a landlord can demand from a tenant is a pet or security deposit I find that the deposit is a security deposit. The landlord's contract states that the deposit is non-refundable, I find this term to be contrary to the Act and it is therefore of no force and effect.

Having found that the deposit held by the landlord is a security deposit I will refer to Section 38 of the Act that deals with security deposits.

Section 38(1) of the Act requires a landlord, within 15 days of the end of the tenancy or the date on which the landlord receives the tenant's forwarding address writing, to either return the deposit or file an Application for Dispute Resolution seeking an Order allowing the landlord to retain the deposit.

If the landlord fails to comply with section 38(1), then the landlord may not make a claim against the deposit, and the landlord **must** pay the tenant double the amount of the deposit (Section 38(6)).

With respect to the return of the security deposit the triggering event is the provision by the tenant of the forwarding address. In this case the evidence is that the tenant

provided her forwarding address on April 7, 2009 and the landlord has not yet returned her deposit.

I therefore find that the landlord has not returned the security deposit within 15 days of receipt of the tenant's forwarding address. The tenant is therefore entitled to a monetary order in amounting to double the deposit which totals \$500.00.

The tenant is provided with a formal Order in this regard. If the landlord does not pay the tenant the sum of \$500.00 forthwith, the tenant may enforce the Order as an Order of the Provincial Court of British Columbia.