



# Dispute Resolution Services

Page: 1

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 his security deposit and to recover the filing fee from the Landlord for the cost of filing this application.

The Tenant stated that that copies of the Application for Dispute Resolution and Notice of Hearing were sent to the Landlord via registered mail at the service address noted on the Application, on August 22, 2009. The Tenant submitted a receipt and documentation from Canada Post , which corroborates the Tenant's statement. Canada Post documentation indicates that the mail was returned to the sender as it was unclaimed by the addressee. These documents are deemed to have been served in accordance with section 89 of the *Residential Tenancy Act (Act)*, however the Landlord did not appear at the hearing.

### Issue(s) to be Decided

The issue to be decided is whether the Tenant is entitled to the return of his security deposit and to recover the cost of filing this Application for Dispute Resolution.

### Background and Evidence

The Tenant stated that he paid a security deposit of \$200.00 when this tenancy began, which was sometime in January or February of 2009. He stated that this tenancy ended on June 30, 2009; that he did not authorize the Landlord to retain the security deposit; that the Landlord did not return any portion of the security deposit; and that the Landlord did not file an Application for Dispute Resolution claiming against the security deposit.

The Tenant stated that he provided the Landlord with his forwarding address, via email, sometime in July of 2009. He is not certain of the date that he provided this to the Landlord.

The Tenant submitted a series of emails between himself and the Landlord's wife, who appears to have been acting as an agent for the Landlord. In an email from the Tenant to the Landlord, dated July 11, 2009, the Tenant reminds the agent for the Landlord that his security deposit is due back on July 15, 2009. In an email from the agent for the Landlord, dated July 13, 2009, the agent asks the Tenant for his home address. In an email from the Tenant to the agent for the Landlord, dated August 06, 2009, the Tenant advises the agent that he is commencing legal action in an attempt to recover his security deposit. The Tenant does not submit an email that corroborates his statement that he provided the agent for the Landlord with his forwarding address by email.

The Tenant stated that he was advised by the Landlord that he would be keeping \$50.00 in compensation for cleaning the carpet.

### Analysis

On the basis of the evidence provided by the Tenant, and in the absence of evidence to the contrary, I find that the Tenant paid a security deposit of \$200.00; that the Landlord did not return any portion of the security deposit; that the Tenant did not authorize the Landlord 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.

On the basis of the evidence provided by the Tenant, and in the absence of evidence to the contrary, I find that this tenancy ended on June 30, 2009.

I find that the Tenant provided insufficient evidence to cause me to conclude that the Tenant provided the Landlord with his forwarding address, via email, sometime in July of 2009. In reaching this conclusion, I was strongly influenced, by the fact that the Tenant did not recall precisely when he sent the email and he no longer has a copy of the email that he allegedly sent, although he submitted several emails in relation to the security deposit that were exchanged between the parties.

I find that the Tenant did provide the Landlord with his forwarding address, in writing, when he sent him with notification of this hearing by registered mail on August 22, 2009. Although the Landlord did not pick up the mail that was sent to him, I find that he did so at his own peril.

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 Landlord did not repay the security deposit or file an Application for Dispute Resolution after being served with the Tenant's forwarding address by

registered mail.

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 must pay the Tenant double the security deposit that was paid, plus any interest due on the original amount.

### Conclusion

I find that the Tenant has established a monetary claim of \$450.00, which is comprised of double 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: December 16, 2009.

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Dispute Resolution Officer