



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing and Social Development

## **DECISION**

### Dispute Codes:

MNSD, FF

### Introduction

This was a cross-application hearing.

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.

The tenants provided affirmed testimony that on October 20, 2009 copies of the Application for Dispute Resolution and Notice of Hearing were sent to each of the landlords at their residential address. The tenants referred to the evidence submitted in the landlord's cross-application evidence, which included a copy of the envelopes that had been sent by the tenants; confirming receipt of the Notice. Copies of Canada Post receipts and tracking numbers were also provided as evidence of service. The tenants confirmed that the landlords received the Notice on October 23, 2009.

These documents are deemed to have been served in accordance with section 89 of the Act, however neither of the 2 named landlords appeared at the hearing.

### Preliminary Matters

This hearing commenced at the scheduled start time, 9 a.m.

The landlord made a cross-application claiming damages to the rental unit, to retain the deposit paid and for compensation for damage or loss. This hearing was scheduled as a cross-Application with the tenant's hearing; however the landlord did not attend.

The tenant's Application was amended to reflect the correct spelling of the female landlord's name.

Issue(s) to be Decided

Are the tenants entitled to return of the deposit paid?

Are the tenants entitled to filing fee costs?

Background and Evidence

The tenancy commenced on August 15, 2008 and terminated on September 30, 2009 as the result of written notice submitted by the tenants on August 31, 2009. The tenants paid a \$450 .00 deposit on August 15, 2008.

The tenants first gave the landlord their forwarding address, in writing, on October 23, 2009, when the landlord was served with the Notice of Hearing in relation to the tenant's Application. The tenants have not received return of their deposit and the landlord has claimed against that deposit.

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. If the landlord does not make a claim against the deposit paid, section 38(6) of the Act determines that a landlord must pay the tenant double the amount of security deposit.

I find that the landlord was served with the tenant's Application on October 23, 2009. On November 10, 2009 the landlord made a cross-Application, claiming against the deposit paid. The landlord had an expectation that the claim for return of double the deposit would be decided during today's hearing.

I find, in the absence of the landlord, that the landlord's Application is dismissed without leave to reapply. The landlord was served with Notice of the tenant's hearing and did not attend, nor did the landlord attend their hearing scheduled at this time, in relation to the claim made against the deposit.

I find that the tenants are not entitled to double the deposit paid. I do not accept the Applications served to the landlord as written notice of the tenant's forwarding address. I find that the landlord would have been effectively provided the written forwarding address today and that the landlord would have had fifteen days from today to either repay the deposit or make an Application claiming against the deposit. As the landlord has made an Application claiming against the deposit and that Application has been

dismissed without leave to reapply, I find that the tenant's are entitled to return of the deposit, plus interest only, in the sum of \$452.46.

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 **\$502.56**, which is comprised of \$452.56 deposit plus interest and \$50.00 in compensation for the filing fee paid by the tenants for this Application for Dispute Resolution and I grant the tenants a monetary Order in that amount.

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.

I dismiss the claim for return of double the deposit paid.

The landlord's Application is dismissed and the landlord may not reapply claiming against the tenants.

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: February 17, 2010.

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Dispute Resolution Officer