



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Ministry of Housing and Social Development

## DECISION

Dispute Codes      MNSD, FF

### Introduction

This matter dealt with an application by the Tenants for the return of their security deposit, compensation for the Landlord's failure to return the security deposit within the time limits required under the Act and to recover the filing fee for this proceeding.

### Issues(s) to be Decided

1. Are the Tenants entitled to the return of their security deposit and if so, how much?

### Background and Evidence

This tenancy started on September 15, 2008 and ended on October 15, 2009 when the Tenants moved out. The Tenants paid a security deposit of \$500.00 at the beginning of the tenancy.

The Tenants gave their forwarding address in writing to the Landlord (in person) on October 1, 2009. The Tenants said the Landlord deducted \$205.60 from the security deposit for cleaning and repairs without the written consent of the Tenants. The Landlord sent a cheque in the amount of \$296.58 to the Tenants on October 28, 2009. The Landlord argued that the Tenants gave their written authorization to have any expenses for cleaning and repairs deducted from their security deposit at the end of the tenancy.

### Analysis

Section 38(1) of the Act says that a Landlord has 15 days from either the end of the tenancy or the date she receives the Tenants' forwarding address in writing (whichever is later) to either return the Tenants' security deposit or to make an application for dispute resolution to make a claim against it. If the Landlord does not do either one of these things and does not have the Tenants' written authorization to keep the security deposit then pursuant to s. 38(6) of the Act, the Landlord must return double the amount of the unreturned security deposit.



# Dispute Resolution Services

Page: 2

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Section 20(e) of the Act says that a Landlord must not include as a term of a tenancy agreement that the Landlord automatically keeps all or part of the security deposit at the end of the tenancy. Section 5 of the Act says that a Landlord or Tenant may not contract out of the Act or regulations and if they do, it is of no force and effect. Consequently, if a Tenant disputes that he or she is responsible for cleaning or repairs, at the end of a tenancy, the Landlord is required under s. 38(1) of the Act to make an application for dispute resolution to make a claim against the security deposit.

I find that the Landlord received the Tenants' forwarding address in writing on October 1, 2009 but only returned \$296.58 of it within 15 days of the end of the tenancy. I find that the Landlord did not return the balance of the security deposit and did not make an application for dispute resolution to make a claim against the balance of the security deposit. I also find that the Landlord did not have the Tenants' written authorization to keep the security deposit. As a result, I find that pursuant to s. 38(6) of the Act, the Landlord must return double the unreturned portion of the security deposit with accrued interest as follows:

Security deposit:	\$500.00
Less: Amount paid:	<u>(\$296.58)</u>
Balance:	\$203.42
Plus: Double amount not returned:	\$406.84
Accrued Interest:	<u>\$2.25</u>
Amount Owing:	\$409.09

As the Tenants have been successful in this matter, they are also entitled to recover the \$50.00 filing fee they paid for this proceeding.

## Conclusion

A monetary order in the amount of **\$459.09** has been issued to the Tenants and a copy of it must be served on the Landlord. If the amount is not paid by the Landlord, the Order may be filed in the Provincial (Small Claims) Court of British Columbia 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: February 10, 2010.

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Dispute Resolution Officer