



## DECISION

Dispute Codes:

MNSD, FF

### Introduction

This hearing was scheduled in response to the tenant's Application for Dispute Resolution, in which the tenant has made application for a monetary Order for return of the security deposit and to recover the filing fee from the landlord for the cost of this Application for Dispute Resolution.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral testimony and to make submissions during the hearing.

### Issue(s) to be Decided

Is the tenant entitled to return of the deposit paid?

Is the tenant entitled to filing fee costs?

### Background and Evidence

The tenancy commenced on August 1, 2009 for a fixed term ending August 1, 2010. The tenants moved out on April 1, 2010. A security deposit in the sum of \$825.00 and pet deposit in the sum of \$300.00 was paid on August 1, 2009.

The tenancy agreement was completed by the tenants, read by the landlord and signed by both parties on July 26 and 27, 2009. The agreement indicated rent was \$1,650.00 per month and that utilities and cable were included. A move-in and move-out condition inspection was not completed.

The tenants are claiming:

Return of deposit	825.00
Return of rent overpayment 8 months X \$150.00 per month	1,800.00
	2,925.00

On April 1, 2010, the landlord gave the tenant a cheque in the sum of \$825.00, post-dated to April 15, 2010. When the tenant attempted to cash the cheque on April 16, 2010, the bank refused to negotiate the cheque as it included only the tenant's last name, which was illegible, and no first name. The tenant provided a copy of the cheque, as evidence of the name, written to the far left of the field, thus leaving no room to write a first name.

The April 15, 2010, cheques had a hand-written notation by the landlord indicating that \$300.00 had been deducted for two month's hydro costs. The tenant's sister had moved in and there was disputed testimony in relation to what, if any remuneration would be paid to the landlord. The tenancy agreement did not include an addendum, referencing additional occupant charges.

On July 29, 2010, the landlord issued the tenant another cheque in the sum of \$825.00; after receiving a copy of the tenant's amended Application increasing their monetary claim to include return of the security deposit. The initial Application, filed April 8, 2010, had requested only return of the pet deposit.

The tenant testified that they did not understand that the utilities were included in the rent and that the landlord had them pay for services that were included in the written agreement they had signed. Each month during the tenancy the tenant paid in excess of \$150.00 for utility costs and they are claiming return of that amount for the months of August 2009 to March, 2010, inclusive.

The landlord issued the security deposit cheque on April 1, 2010, post-dating it, with the understanding that the tenant would enter the first name on the cheque, for deposit. No explanation was given as to why the landlord post-dated the deposit cheque.

The pet deposit was held back by the landlord in lieu of rent payments the landlord felt she was entitled to for the tenant's sister. This was based on a verbal agreement, which the tenant denied was made.

The landlord testified that the tenants willingly paid the utility costs, which they knew utilities were to be paid, in addition to the rent indicated on the tenancy agreement. The landlord stated that they had a verbal agreement for these payments, as demonstrated by the tenant's willingness to make the payments throughout the tenancy.

## 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.

The amount of deposit owed to a tenant is also contingent on any dispute related to damages and the completion of move-in and move-out condition inspections. In this case there is no dispute related to damages before me.

The landlord did return the deposit to the tenants, with a cheque posted-dated for the fourteenth day after the end of the tenancy. However, that cheque was written in such a fashion, that it was found to be non-negotiable. I find the landlord's submission that she expected the tenant to write in the first name on the cheque, on the balance of probabilities, somewhat contradictory, as the cheque was written in a manner that no room was left for the tenant to write in a first name.

Section 38(1) of the Act provides:

**38** (1) *Except as provided in subsection (3) or (4) (a), within 15 days after the later of*

*(a) the date the tenancy ends, and*

*(b) the date the landlord receives the tenant's forwarding address in writing,*

*the landlord must do one of the following:*

*(c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;*

*(d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.*

Section 38(6) of the Act provides:

*(6) If a landlord does not comply with subsection (1), the landlord*

*(a) may not make a claim against the security deposit or any pet damage deposit, and*

*(b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.*

I find that even though the landlord provided a cheque to the tenants dated within fifteen days of the end of the tenancy, that the tenant was not paid the deposit, as required by section 38(1) of the Act. For some reason the landlord did not allow sufficient space for a first name to be written on the cheque, resulting in the cheque being refused by the bank. Therefore, payment was not made to the tenant within fifteen days of the end of the tenancy.

It was not the responsibility of the tenant to ensure that the cheque was valid. If it had been issued on the day the tenancy ended the tenant would have attempted to deposit the cheque earlier, thus providing the landlord time to replace the cheque within the fifteen day time-frame. This did not occur, as the landlord gave a cheque that was post-dated, which I find was on fault of the tenant.

Therefore, pursuant to section 38(6) of the Act, I find that the tenant is entitled to return of double the security deposit paid in the sum of \$1,650.00.

In relation to the pet deposit, there is no evidence before me of any written agreement allowing the landlord to retain the pet deposit at the end of the tenancy. There is no evidence before me that the landlord submitted an application within fifteen days of April 1, 2010, claiming against the deposit. Therefore, pursuant to section 38(6) of the Act, I find that the tenant is entitled to return of double the pet deposit paid in the sum of \$600.00.

In relation to the claim made for utility overpayment; the tenancy agreement signed by both parties indicated that rent was \$1,650.00 per month and that utilities were to be included as part of the rent paid. Despite the landlord's submission that the tenant wrote the tenancy contract and verbally agreed to pay \$150.00 per month for utilities; there is only disputed testimony in relation to this submission.

The landlord had a responsibility to follow the written agreement she read and signed with the tenant and I find, in the absence of a written addendum to the agreement or a subsequent written agreement altering the terms of the tenancy agreement, that the signed agreement is the only document which can be relied upon. Therefore, pursuant to section 67 of the Act, I find that the tenant is entitled to return of the rent overpayments made each month in the sum of \$150.00 from August 2009 to March, 2010, inclusive in the amount of \$1,800.00.

Therefore, the tenant is entitled to the following compensation:

	Claimed	Accepted
Return of pet deposit	300.00	600.00

Return of rent overpayment 8 months X \$150.00 per month	1,800.00	1,800.00
	2,925.00	4,050.00

I have issued a monetary Order in to the tenant in the sum of \$4,050.00. The tenant has been given a July 29, 2010, cheque in the sum of \$825.00. If that cheque is or has been successfully cashed by the tenant, then the tenant must present proof of that payment to the Court. If the cheque was not successfully cashed, then at the time the tenant enforces the Order, she must relinquish the cheque to the Court. If the cheque has been cashed then that amount will be deducted from the Order.

The landlord is advised to retain proof of successful negotiation of the July 29, 2010, cheque for use in Small Claims Court, should that be necessary.

I find that the tenant's application has merit, and I find that the tenant is entitled to recover the filing fee from the landlord for the cost of this Application for Dispute Resolution.

### Conclusion

I find that the tenant has established a monetary claim, in the amount of \$4,100.00, which is comprised of double the deposits in the sum of \$2,250.00, compensation for loss in the sum of \$1,800 and \$50.00 in compensation for the filing fee paid by the tenant for this Application for Dispute Resolution.

Based on these determinations I grant the tenant a monetary Order for \$4,100.00. 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.

If the tenant enforces the Order through The Province of British Columbia Small Claims Court, she must submit the July 29, 2010, cheque to the Court, or provide proof that the cheque was successfully negotiated.

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: August 06, 2010.

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Dispute Resolution Officer