



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing and Social Development

## **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

This tenancy commenced on June 1, 2008 as a one year fixed-term agreement; a copy of which was provided as evidence. On May 19, 2009, just prior to the fixed-term expiry date the parties entered in to another fixed-term tenancy agreement, which commenced on June 1, 2009 and ended on May 31, 2010.

The tenant submitted a copy of the "Extension of Current Lease" document signed on May 19, 2010. This agreement set out the rent, due date of rent and the details of the fixed-term, which could continue as a month-to-month tenancy.

The first fixed-term signed between the parties included the tenant/Applicant and a second, male tenant. At the time of signing the lease "extension" the landlord was informed that the male tenant had moved out within the first 2 months of the June 2008

tenancy. The male tenant did not sign the June 1, 2009, fixed-term agreement; only the female tenant/Applicant entered into that agreement.

The tenancy agreement signed on May 16, 2008, confirmed that a deposit in the sum of \$475.00 was paid. The male tenant had written a cheque, which the landlord placed in a trust account in the male tenant's name.

The female tenant ended the tenancy effective March 31, 2010. On April 6, 2010, the tenant faxed her forwarding address to the landlord. The landlord could not confirm receipt on that date but accepted the tenant's testimony that it was delivered on April 6, 2010.

On April 21, 2010, the tenant submitted an application claiming return of double the deposit.

The landlord submitted that the deposit had been placed in a trust account that allowed return of the deposit to only the male tenant; who did not supply his forwarding address in writing. The landlord also confirmed that at the time the 2<sup>nd</sup> fixed-term agreement was signed on May 19, 2009, he was made aware of the absence of the male tenant and the fact that only female tenant would enter into the "extended" tenancy.

In retrospect, the landlord believes that once the female tenant informed him only she would sign the extended agreement; the original deposit should have been returned to the tenant, in the name of both tenants and then a new deposit collected for the "extended" term. This did not occur, as the landlord believed that only the male tenant was entitled to the funds that the landlord held in trust.

### Analysis

Residential Tenancy Branch policy suggests that co-tenants are two or more tenants who rent the same property under the same tenancy agreement. Co-tenants are jointly responsible for meeting the terms of the tenancy agreement. Co-tenants also have equal rights under the tenancy agreement. I find this a reasonable stance and on that basis, find that either one or both of the tenants were at liberty to apply requesting return of the deposit.

First, I will consider the date the male co-tenant's tenancy ended. As the male co-tenant did not have his name removed from the 2008 fixed-term agreement, I find that the male tenant was a co-tenant, with the female tenant, until the first fixed-term agreement ended on May 31, 2009.

The landlord's method of holding deposits is at the discretion of the landlord; however, as co-tenants have equal rights and obligations under the tenancy I can see no reason why 1 of 2; or even 1 of 5 co-tenants should not have the right to apply for return of the

deposit. Once the deposit is disbursed by way of an Order, the matter is decided and any further Application should be found as previously decided.

I find that the deposit did transfer with the female tenant, as the tenancy agreement was simply extended and relied upon the terms of the agreement signed in 2008; which included the payment of a deposit.

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.

I find that the landlord received the tenant's written forwarding address on April 6, 2010. The landlord had fifteen days, until April 21, 2010, to return the deposit or submit an Application claiming against the deposit. I have rejected the landlord's submission that only the male tenant was entitled to return of the deposit, as the Applicant was a co-tenant, possessing equal rights under the tenancy agreement.

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.*

Therefore, as the landlord did not return the deposit by April 21, 2010, and did not submit a claim against the deposit, I find that the tenant is entitled to return of double the deposit in the sum of \$950.00 plus \$4.48 interest.

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 \$1,004.48, which is comprised of double the deposit of \$950.00, interest in the sum of \$4.48 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 \$1,004.48. 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.

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 31, 2010.

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Dispute Resolution Officer