



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing and Social Development

## **DECISION**

Dispute Codes      MNSD, FF

### Introduction

This matter dealt with an application by the Tenant for the return of her security deposit, for compensation equal to the amount of the security deposit due to the Landlords' failure to return the deposit within the time limits required under the Act and to recover her filing and service fees for this proceeding.

The Tenant said she served the Landlords with the Application and Notice of Hearing (the "hearing packages") by registered mail on April 12, 2010. Based on the evidence of the Tenant, I find that the Landlords were served with the Tenant's hearing packages as required by s. 89 of the Act and as a result, the hearing proceeded in the Landlords' absence.

### Issues(s) to be Decided

1. Is the Tenant entitled to the return of her security deposit and if so, how much?

### Background and Evidence

This tenancy started on October 1, 2009 and ended on November 30, 2009. Rent was \$860.00 per month. The Tenant paid a security deposit of \$430.00 at the beginning of the tenancy.

The Tenant said she participated in a move out inspection of the rental unit on the last day of the tenancy and signed the condition inspection report. The Tenant claimed, however that one of the Landlords (A.M.) who also participated in the move out inspection added information to the "End of Tenancy" box on p. 2 of the report after she signed it. In particular, the Tenant said no damages were inserted in box "Z" and the box that stated she agreed with the report was not ticked off when she signed it. In any event, the Tenant said she did not give the Landlords written authorization to deduct any amounts from her security deposit and wrote her forwarding address on the bottom of the condition inspection report. The move in condition inspection portion of the report is also completed however it is unsigned by the Tenant.

The Tenant said that she contacted the Landlords on December 14, 2009 when she did not receive her security deposit back. The Tenant said that the Landlords told her they were still calculating amounts she owed them for damages and then sent her an e-mail advising her that they were deducting \$341.21 from her deposit and would send her a cheque for the balance of \$88.79. The Tenant said she received a cheque for \$88.79 on or about December 24, 2009 but has not cashed it.

## Analysis

Section 38(1) of the Act says that a Landlord has 15 days from either the end of the tenancy or the date they receive the Tenant's forwarding address in writing (whichever is later) to either return the Tenant's 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 Tenant's 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 security deposit.

Sections 24(2) and 36(2) of the Act say that if a Landlord does not complete a move in or a move out condition inspection report, the Landlord's right to make a claim against the security deposit for damages to the rental unit is extinguished. In other words, the Landlords may still bring an application for compensation for damages however, they may not offset those damages from the security deposit.

I find that the Landlords received the Tenant's forwarding address in writing on November 30, 2009 but only returned \$88.79 of it **after** the 15 day time limit set out under s. 38(1) of the Act. I also find that the Landlords did not make an application for dispute resolution to make a claim against the deposit and did not have the Tenant's written authorization to keep the security deposit. I further find that in not completing the move in inspection report (with the Tenant's signature) the Landlords' right to make a claim against the security deposit for alleged damages to the rental unit was extinguished under s. 24(2) of the Act. As a result, I find that pursuant to s. 38(6) of the Act, that the Landlords must return double the amount of the security deposit (\$860.00) to the Tenant.

As the cheque in the amount of \$88.79 has not been cashed by the Tenant and is likely now stale dated and cannot be cashed, I order the Tenant to return that cheque to the Landlords. As the Tenant has been successful in this matter, I also find that she is entitled to recover from the Landlords her service fees of \$26.92 and the \$50.00 filing fee for this proceeding.



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## Conclusion

A monetary order in the amount of **\$936.92** has been issued to the Tenant and a copy of it must be served on the Landlords. If the amount is not paid by the Landlords, 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: August 09, 2010.

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Dispute Resolution Officer