



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Ministry of Housing and Social Development

## **DECISION**

### Dispute Codes:

MNSD, MNDC, 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, a monetary order for damage or loss under the Act and to recover the filing fee from the landlord for the cost of this Application for Dispute Resolution.

The tenant provided affirmed testimony that copies of the Application for Dispute Resolution and Notice of Hearing were sent on April 24, 2010, to the landlord via registered mail at the address noted on the Application and the service address included on the tenancy agreement submitted as evidence. A Canada Post tracking number and receipt was provided as evidence of service.

These documents are deemed to have been served in accordance with section 89 of the Act; however the Tenant did not appear at the hearing.

### Issue(s) to be Decided

Is the tenant entitled to return of the deposit paid?

Is the tenant entitled to return of rent paid?

Is the tenant entitled to filing fee costs?

### Background and Evidence

The tenancy commenced on February 1, 2010; for a twelve month fixed term ending February 1, 2011. Rent was \$1,125.00 per month due on the first day of the week. A deposit in the sum of \$562.50 was paid on January 4, 2010.

The tenant was allowed to move some belongings into the rental unit during the month of January. She cleaned the carpets and was to be paid for this labour.

On January 15, 2010, the tenant noticed water dripping from the ceiling and she called the landlord. The landlord told the tenant if she ever noticed water leaks to call him as the previous tenants had caused the septic system to back up into the basement. The tenant then realized that a smell she had been detecting in the unit was the result of the sewage back-up. The tenant did not discuss this any further with the landlord.

As the landlord had not let the tenant know about the sewage back-up the tenant decided that she would not move into the rental unit and on January 30, 2010, the tenant retrieved her belongings from the unit.

The tenant was provided with a copy of the tenancy agreement, receipts for rent payment made in the sum of \$570.00 cash and a cheque dated February 1, 2010, which the tenant stopped. Copies of these documents were provided as evidence.

The tenant submitted that repairs that were to be made prior to February 1, 2010, promised by the landlord, were not made, that a "junk" vehicle was left in her parking space and the smell was a health hazard.

On March 19, 2010, the tenant sent the landlord her written forwarding address, via registered mail to the landlord's service address. This mail was returned to the tenant as unclaimed by the landlord. The tenant has not received her deposit from the landlord.

### Analysis

In relation to the tenant's claim for return of rent paid, the copy of the tenancy agreement submitted as evidence indicated that the tenant entered into a contract to rent a unit commencing February 1, 2010.

Even though the tenant believed that the rental unit was not in a suitable condition for rental, there is no evidence before me that this was the case. The tenant did not speak with the landlord in relation to her concerns. Therefore, in the absence of evidence supporting the claim made by the tenant in relation to the state of her rental unit proving it was uninhabitable, I dismiss the claim for return of rent paid in the sum of \$570.00.

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 have no evidence before me that a move-in condition inspection or move-out condition inspection was completed as required by the Act. Further, I have no evidence that that landlord has repaid the deposit as requested in writing by the tenant and served by registered mail to the landlord effective March 24, 2010. I find that the tenancy ended January 30, 2010, the day the tenant removed her belongings. Therefore, pursuant to section 38(1) of the Act, I find that the tenant is entitled to return of double the \$562.50 deposit paid to the landlord.

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 \$1,175.00, which is comprised of double the deposit paid 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 \$1,175.00. 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.

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: September 02, 2010.

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Dispute Resolution Officer