



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing and Social Development

## **DECISION**

Dispute Codes      MNSD, MNDC, FF

### Introduction

This matter dealt with an application by the Tenant for the return of a security deposit plus compensation equal to the amount of the security deposit due to the Landlord's failure to return the deposit within the time limits required under the Act. The Tenant also applied to recover an overpayment of rent and the filing fee for this proceeding.

The Tenant said he sent the Application and Notice of Hearing (the "hearing package") by registered mail to the Landlord at its business address on June 9, 2010. Section 90 of the Act states that a document delivered by mail is deemed to be received by the recipient 5 days later. Based on the evidence of the Tenant, I find that the Landlord was served with the Tenant's hearing package as required by s. 89 of the Act and the hearing proceeded in the Landlord's absence.

### Issues(s) to be Decided

1. Is the Tenant entitled to the return of his security deposit and if so, how much?
2. Is the Tenant entitled to recover an overpayment of rent?

### Background and Evidence

This tenancy started in the summer of 2008 and ended on February 28, 2009 when the Tenant moved out. Rent was \$694.05 per month. The Tenant paid a security deposit of \$325.00 at the beginning of the tenancy.

The Tenant said he gave his notice ending the tenancy to the Landlord in February 2009 and the Landlord advised him that he would have to pre-pay rent for March 2009 but that he would be refunded that amount if a new tenant moved into the rental unit for March 2009. The Tenant said a new tenant did move into the rental unit for March 2009 however the Landlord has not refunded his rent payment for March 2009.

The Tenant also said that he completed a move out condition inspection report with the Landlord on February 28, 2009 and wrote his forwarding address on that report. The Tenant said he has not received his security deposit back and did not give the Landlord written authorization to keep it.



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## Analysis

Section 38(1) of the Act says that a Landlord has 15 days from either the end of the tenancy or the date he receives 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 to the Tenant.

I find that the Landlord received the Tenant's forwarding address in writing on February 28, 2009 but did not return his security deposit of \$325.00 and did not have the Tenant's written authorization to keep the security deposit. I also find that the Landlord did not make an application for dispute resolution to make a claim against the Tenant's security deposit. As a result, I find that pursuant to s. 38(6) of the Act, the Landlord must return double the amount of the security deposit \$650.00 to the Tenant with accrued interest of \$2.04 (on the original amount).

Based on the documentary evidence of the Tenant and in the absence of any evidence from the Landlord to the contrary, I also find that the Tenant made an overpayment of rent in the amount of \$694.05 for March 2009 and that the Landlord failed to return this to the Tenant notwithstanding that the rental unit was re-rented to new tenants for that month. As the Tenant has been successful in this matter, I further find that he is entitled pursuant to s. 72 of the Act to recover the \$50.00 filing fee for this proceeding from the Landlord.

## Conclusion

A Monetary Order in the amount of **\$1,396.09** has been issued to the Tenant 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: October 21, 2010.

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Dispute Resolution Officer