



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing and Social Development

## **DECISION**

Dispute Codes      MNSD, FF

### Introduction

This hearing dealt with an application by the tenant for return of part or all of the security deposit and recovery of the filing fee. Both parties participated in the conference call hearing.

### Issues to be Decided

Is the tenant entitled to any of the above under the Act.

### Summary of Background and Evidence

This tenancy started August 1, 2008 with monthly rent of \$950.00, the tenant paid a security deposit of \$475.00.

The tenant testified that she provided the landlord with her forwarding address in writing at the end of September 2010 but that the landlord had returned only \$141.98 of her \$475.00 security back. The tenant stated that a move in inspection had not been completed by the original property manager. The tenant verified in this hearing that this application was in reference to unit 311. The tenant is requesting per the Act that double the security deposit be returned to her.

The landlord's agent testified that she was the new property manager for the building and that the former property manager had passed away. The landlord's agent stated that there was not a move-in inspection report for her to refer to when the tenant vacated the rental unit. The move-out inspection was completed by doing a walk-through with the tenant. The landlord's agent testified that the tenant admitted that her dogs had chewed the carpets but there was no agreement signed whereby the tenant agreed to the landlord keeping any portion of the security deposit. The landlord's agent acknowledged that they had received the tenant's forwarding address in writing, sometime in October 2010 but had not made application to this office to retain the security deposit for damage done to the unit by the tenant's dogs.

## Analysis

### Residential Tenancy Act Section 38 **Return of security deposit and pet damage deposit**

- (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.
- (2) Subsection (1) does not apply if the tenant's right to the return of a security deposit or a pet damage deposit has been extinguished under section 24 (1) *[tenant fails to participate in start of tenancy inspection]* or 36 (1) *[tenant fails to participate in end of tenancy inspection]*.
- (3) A landlord may retain from a security deposit or a pet damage deposit an amount that
  - (a) the director has previously ordered the tenant to pay to the landlord, and
  - (b) at the end of the tenancy remains unpaid.
- (4) A landlord may retain an amount from a security deposit or a pet damage deposit if,
  - (a) at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant, or
  - (b) after the end of the tenancy, the director orders that the landlord may retain the amount.
- (5) The right of a landlord to retain all or part of a security deposit or pet damage deposit under subsection (4) (a) does not apply if the liability of the tenant is in relation to damage and the landlord's right to claim for damage against a security deposit or a pet damage deposit has been extinguished under section 24 (2) *[landlord failure to meet start of tenancy condition report requirements]* or 36 (2) *[landlord failure to meet end of tenancy condition report requirements]*.
- (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.
- (7) If a landlord is entitled to retain an amount under subsection (3) or (4), a pet damage deposit may be used only for damage caused by a pet to the residential property, unless the tenant agrees otherwise.
- (8) For the purposes of subsection (1) (c), the landlord must use a service method described in section 88 (c), (d) or (f) *[service of documents]* or give the deposit personally to the tenant.

Based on the documentary evidence and undisputed testimony of both parties, I find on a balance of probabilities that the tenant has met the burden of proving that they have grounds for entitlement to an monetary order for double the security deposit.

Security deposit	\$475.00
Interest	\$2.98
<b>Total</b>	<b>\$477.98</b>
Deduction	\$336.00
SD returned to tenant	\$141.98
SD Balance owed tenant	\$336.00
<b>SD Balance X 2 owed</b>	<b>\$672.00</b>

I find that the tenant has established a monetary claim for \$672.00 in return of double the security deposit.

The tenant is also entitled to recovery of the \$50.00 filing fee.

## Conclusion

I find that the tenant has established a monetary claim for \$672.00 in return of double the security deposit. The tenant is also entitled to recovery of the \$50.00 filing fee.

A monetary order in the amount of **\$722.00** 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: December 21, 2010

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Dispute Resolution Officer