



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing and Social Development

## **DECISION**

Dispute Codes      MNDC, MNSD, & FF

### Introduction

This hearing dealt with an application by the tenant seeking the return of security deposit and recovery of an overcharge of rent by the landlord.

The landlord was served with notice of this hearing when the documents were provided in person to the office of the landlord on July 22, 2010 and the landlord was provided a copy of the tenant's evidence in the same manner on November 23, 2010.

On November 25, 2010 the landlord provided a letter to the Residential Tenancy Branch and to the tenant. The landlord identified the owner of the property and requested that the application for Dispute Resolution be amended to reflect the owner of the property.

Despite providing this response to the application and having been served with notice of the tenant's claim and all evidence, the landlord did not appear for the hearing. I proceeded with the hearing in the landlord's absence.

### Issues(s) to be Decided

Has the landlord been correctly identified in the application for Dispute Resolution?

Has the landlord breached the tenancy agreement, the *Act* and/or regulations entitling the tenant to compensation?

### Background and Evidence

This tenancy began on October 1, 2007 for a fixed term tenancy ending effective September 30, 2008. The monthly rent was \$2,900.00 and the tenant paid a security deposit of \$1,450.00 on September 20, 2007.

The tenant's agent is named as a guarantor in the tenancy agreement and the respondent to this application is identified as the landlord. The tenant never dealt with or had any contact with the registered owner of the property.

At the end of the fixed term tenancy on September 30, 2008 the tenancy continued on a month to month basis. There was a rent increase setting the new monthly rent to \$3,016.00. This tenancy continued until March 30, 2010 after the tenant gave 30 days notice to end the tenancy in writing on February 27, 2010.

Towards the end of the tenancy, the tenant contacted the landlord indicating that she could not move out of the rental unit until April 10, 2010 and wanted to know if she could remain in the rental unit for 10 extra days. According to the tenant the landlord agreed to the over hold as the rental unit was not re-rented; however, the landlord requested a full month's rent as a deposit.

The tenant vacated the rental unit on April 10, 2010 and by e-mail on April 13, 2010 indicated that the utilities would be disconnected by April 14, 2010. In the e-mail the tenant notes that renovations have begun in the rental unit and asks the question: *"When did you stop charging me rent?"*.

On April 15, 2010 the tenant e-mailed the landlord requesting a refund on the sum paid for use of the rental unit. This has never been paid; although at different times through the months of April to November 2010 the landlord suggests that a refund will be provided.

On November 4, 2010 the landlord did provide the tenant with a refund of \$1,518.34 comprised of the original security deposit plus interest. The landlord did not provide a refund on the rent paid for April 2010.

### Analysis

Based on the testimony and evidence provided, in the absence of any evidence from the landlord, and on a balance of probabilities, I find as follows:

I grant the tenant's application for Dispute Resolution and Order that the landlord pay the tenant double her security deposit pursuant to section 38(6) of the *Act*.

I accept the evidence of the tenant that the landlord received her forwarding address in writing and that the landlord did not file an application for Dispute Resolution requesting to retain the tenant's security deposit.

Section 38(1) of the *Act* requires a landlord to either return a tenant's security deposit or to file an application for Dispute Resolution to retain the security deposit within 15 days of receiving the tenant's forwarding address in writing. Section 38(6) of the *Act* states that if a landlord fails to comply, or follow the requirements of section 38(1), then the landlord must pay the tenant double the security deposit.

I accept that the landlord has already returned the original portion of the tenant's deposit plus interest for the sum of \$1,518.34 and find that the landlord must pay an additional **\$1,450.00**.

I also accept the tenant's evidence that the landlord agreed to let the tenant over hold in the rental unit from April 1, 2010 to April 10, 2010. I accept that the tenant gave the landlord a full month's rent in good faith as a deposit only and I find that there was no agreement that the tenant's had to pay a full month's rent.

I also accept the tenant's evidence that the landlord had possession of the rental unit as of April 11, 2010 and began renovations on the rental unit. The landlord was not experiencing any loss as a result of any breach or action of the tenant and was utilizing the rental unit to their own benefit as of April 11, 2010. There were no grounds or basis on which the landlord should have held the tenant's money.

I grant the tenant's application seeking the return of **\$2,010.67** which the landlord over charged for the tenants use and occupancy of the rental unit after the tenancy ended.

Having granted the tenant's application, I also grant the tenant's request to recover the filing fee paid for submitting this application from the landlord. I find that the tenant has established a total monetary claim for the sum of **\$3,510.67**. This sum is comprised of the penalty portion of the tenant's security deposit of \$1,450.00, the overcharge of rent by the landlord of \$2,010.67 plus the \$50.00 filing fee.

Conclusion

I grant the tenant's application and have issued a monetary Order for the sum of **\$3,510.67**. This Order must be served upon the landlord. This Order may be 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: December 13, 2010.

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Dispute Resolution Officer