



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Public Safety and Solicitor General

## **DECISION**

**Dispute Codes**      MNSD, FF

### **Introduction**

This hearing was convened by way of conference call to deal with the tenant's application for return of double the amount of the security deposit and pet damage deposit and to recover the filing fee from the landlord for the cost of this application. The tenant attended the hearing, however despite being served with the Tenant's Application for Dispute Resolution and notice of hearing documents by registered mail on July 30, 2010, the landlord did not attend. The tenant gave affirmed testimony and provided proof of service upon the landlord in advance of the hearing. The tenant also stated that the landlord refused to pick up the registered mail and the post office subsequently returned it to the tenant.

All information and testimony has been reviewed and is considered in this Decision.

### **Issue to be Decided**

Is the tenant entitled to return of all or part of the security deposit and pet damage deposit, or double the amount of those deposits?

### **Background and Evidence**

This fixed-term tenancy began on January 1, 2010 and expired on April 30, 2010. By agreement between the parties, the tenant actually moved from the rental unit on May 1, 2010.

Rent in the amount of \$430.00 per month was payable in advance on the 1<sup>st</sup> day of each month, and there are no rental arrears. At the outset of the tenancy, the landlord collected a security deposit in the amount of \$215.00 and a pet damage deposit in the amount of \$100.00.

The tenant testified that on the day of the move-out, she gave the landlord a written forwarding address along with her email address and phone number. The landlord had a cheque prepared for \$265.00, being all except \$50.00 of the deposits and gave it to the tenant stating that the tenant had damaged a desk in the rental unit. The tenant responded that the desk was in the same condition as when she moved in and that she had photographs to prove so but they were packed away. The tenant testified that the

previous tenant had warned her that the landlord may attempt to keep all or part of the deposits, so the tenant took photographs when she moved in.

The landlord agreed that the tenant could return with the photographs and if she could prove the condition of the desk at move-in the landlord would return the other \$50.00 of the deposits. The parties then conducted the move-out condition inspection.

When the tenant returned with the photographs, the landlord refused to look at them and stated that they could have been electronically altered and therefore were not proof. The landlord still refused to return the balance of the deposits.

The parties exchanged emails after that date, wherein the landlord agreed to return \$25.00 "out of good faith," but the tenant disagreed that the landlord should keep any portion of those deposits.

## **Analysis**

The *Residential Tenancy Act* provides for service of an Application for Dispute Resolution by registered mail, and states that a document served by registered mail is deemed to be served 5 days after mailing. I find that the Tenant's Application for Dispute Resolution and notice of hearing documents were mailed on July 30, 2010 as evidenced by the registered mail documents provided by the tenant in advance of the hearing. I further find that the documents are deemed to have been served on the landlord on August 4, 2010.

Section 38 (1) of the *Residential Tenancy Act* is clear with respect to deposits. The landlord has 15 days from the date that the tenancy ends or the date the tenant provides a forwarding address in writing, whichever is later, to return the deposits in full or apply for dispute resolution claiming against those deposits. If the landlord fails to do either, the consequences are set out in Section 38 (6):

**38 (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.

I find that the tenancy ended on May 1, 2010 and the tenant provided her forwarding address in writing on that date. The landlord has not returned all of the deposits to the tenant and has not applied for dispute resolution claiming against any portion of the deposits held in trust. I find that the tenant has established a claim for the security deposit still held in trust by the landlord in the amount of \$50.00, no accrued interest,



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and double the base amount of the security deposit in the amount of \$100.00, for a total of \$100.00.

I further find that the tenant was not required to pay a filing fee for the cost of this application, and therefore, the application that the tenant recover the cost from the landlord must be dismissed.

## **Conclusion**

For the reasons set out above, I grant the tenant an order under section 67 for the balance due of \$100.00. This order may be filed in the Provincial Court of British Columbia, Small Claims division and enforced as an order of that Court.

The tenant's application for an order that the tenant recover the filing fee from the landlord for the cost of this application is hereby dismissed without leave to reapply.

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 23, 2010.

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Dispute Resolution Officer