



# 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 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, compensation 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 October 14, 2010, via registered mail to the landlord's service address provided on the tenancy agreement. The service address was the same as the rental unit address; although the landlord did not reside at the rental unit. The tenant provided a copy of the tenancy agreement as evidence of the service address.

The tenant provided a copy of the Canada Post tracking information which showed that her registered mail was mistakenly redirected back to the tenant. On November 9, 2010, the tenant's current landlord picked up the mail and gave it to the tenant who then returned the Notice of hearing package via registered mail to the landlord on the same day.

On November 12, 2010, the registered mail was accepted by an individual at the landlord's service address.

On November 22, 2010, an occupant residing at the landlord's service address returned the mail to the tenant as the landlord was out of the country. The returned mail was then received by the tenant's current landlord on November 26, 2010. At this point the tenant again mailed the Notice of Hearing package via regular mail to the landlord's service address. The occupant at the service address was asked not to tamper with the mail. The package sent by regular mail was not returned to the tenant.

Section 71(2) of the Act provides:

(2) In addition to the authority under subsection (1), the director may make any of the following orders:

(a) that a document must be served in a manner the director considers necessary, despite sections 88 *[how to give or serve documents generally]* and 89 *[special rules for certain documents]*;

**(b) that a document has been sufficiently served for the purposes of this Act on a date the director specifies;**

(c) that a document not served in accordance with section 88 or 89 is sufficiently given or served for purposes of this Act.

(Emphasis Added)

Therefore, pursuant to section 71(2) of the Act I find, effective November 12, 2010, the registered mail was sufficiently served to the landlord. The landlord provided a service address that was in fact the rental unit address, where the landlord did not reside. The occupants at the service address did not appear to have been given any direction as to how to deal with mail served to the address. I find that the landlord's failure to ensure that mail served to her at the service address does not thwart the tenant from being able to successfully serve the landlord at the address provided in writing by the landlord at the start of the tenancy.

#### Issue(s) to be Decided

Is the tenant entitled to return of the deposit paid?

Is the tenant entitled to compensation under the Act?

Is the tenant entitled to filing fee costs?

#### Background and Evidence

On April 9, 2010, the tenant and landlord signed a tenancy agreement for a fixed term tenancy commencing September 1, 2010, ending July 31, 2011. Rent was \$700.00 per month; the tenant gave the landlord a series of post-dated cheques. The tenancy agreement submitted as evidence did not include a rent due date.

The tenant provided the landlord with a deposit in the sum of \$350.00 on April 9, 2010. On September 5, 2010, the tenant and landlord had a disagreement as the tenant's first months cheque had not processed. The tenant was going to pay via cash; however the landlord gave her a hand-written 10 day notice ending the tenancy. The tenant did not move in and a dispute ensued in relation to belongings that the landlord would not return to the tenant.

The tenant provided a copy a September 18, 2010 note sent to the landlord via Canada Post at the service address requesting return of the deposit paid to a forwarding address contained in that letter. The tenant has not received the deposit.

The tenant would like the landlord to return the eleven post-dated cheques written for the first of each month between September 2010 and July 1, 2011; copies of these cheques were provided as evidence.

### Analysis

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; however, the tenant stated she never resided in the unit. Further, I have no evidence that that landlord has repaid the deposit as requested in writing by the tenant in her letter mailed to the landlord's service address on September 18, 2010.

I find that the landlord was given the written forwarding address no later than September 23, 2010, and that the landlord had until October 5, 2010, to return the deposit or file a claim against the deposit; there is no evidence before me that the landlord did either. Therefore, I find that the tenant is entitled to return of double the \$350.00 deposit paid to the landlord.

I note that the addendum to the tenancy agreement required the tenant to forfeit a portion of the deposit at the end of the tenancy and that the landlord would not pay interest. Any terms of an agreement which breach the Act are not enforceable.

Section 38(1) of the Act requires a landlord to pay any applicable interest that has accrued on deposits held in trust; in this case no interest has accrued. Further, a tenant may sign agreeing to deductions from the deposit, only at the end of a tenancy. At no time during or prior to the tenancy does the Act permit a landlord to obtain written concessions from a tenant in relation to the deposit held in trust.

Residential Tenancy Regulation, Schedule, section 5(4) provides:

*(4) The landlord must return to the tenant on or before the last day of the tenancy any post-dated cheques for rent that remain in the possession of the landlord. If the landlord does not have a forwarding address for the tenant and the tenant has vacated the premises without notice to the landlord, the landlord must forward any post-dated cheques for rent to the tenant when the tenant provides a forwarding address in writing.*

As I have found that the landlord was provided with a forwarding address no later than September 23, 2010; I Order, pursuant to Schedule section 5(4,) the landlord to forthwith return the tenant's eleven post-dated cheques that were provided to the landlord prior to the start of the tenancy.

The balance of the tenant's monetary claim was not heard, as there were no details included in the application outlining the balance of the monetary amount indicated on the application.

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 \$750.00, which is comprised of double the \$350.00 deposit 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 \$750.00. 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.

The landlord must forthwith return to the tenant all eleven post-dated cheques provided to the landlord at the start of the tenancy.

The balance of the monetary claim was not heard and no finding was made on that portion of the monetary application.

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: February 15, 2011.

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Residential Tenancy Branch