



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Ministry of Public Safety and Solicitor General

## DECISION

Dispute Codes      MNSD & FF

### Introduction

This hearing dealt with an application by the tenants seeking the return of double their security deposit. Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross examine the other party, and make submissions to me.

### Issue(s) to be Decided

Did the landlords comply with section 38(1) of the *Act*?

### Background and Evidence

This tenancy began September 1, 2008 for the monthly rent of \$1,400.00 and a \$700.00 security deposit paid by the tenants on September 1, 2008. The current landlords purchased the property in 2009. The tenancy ended by mutual agreement on April 20, 2010. A move in condition inspection was not completed at the start of the tenancy but a move out condition inspection was completed at the end of the tenancy.

In May 2010 the landlords filed an Application for Dispute Resolution seeking a monetary claim for unpaid utilities and seeking to retain the tenants' security deposit in satisfaction of this claim. The matter was heard on August 23, 2010 and a decision was issued dated the same day. In the decision the Dispute Resolution Officer (DRO) dismissed the landlords' application without leave to re-apply and ordered that the landlords return the tenants' security deposit plus interest. The DRO stated that the security deposit was to be returned "*forthwith*" [emphasis added].

It is the position of the tenants that the landlord was compelled by the decision of the DRO to return the security deposit immediately and in accordance with section 38 of the *Act* within 15 days and because the landlords failed to do so, the landlords are obligated to return to the tenants double their security deposit plus interest.

The landlords submitted that there was no breach of section 38(1) of the *Act* because the landlords had filed an application to retain the tenants' security deposit within 15 days when they filed their application for Dispute Resolution on May 3, 2010. Therefore, since there was no breach of section 38(1) of the *Act*, the landlord is not obligated to pay the tenants double their security deposit pursuant to section 38(6).

Both parties confirmed that the tenants' security deposit plus interest of \$703.50 was returned to the tenants by mail on October 10, 2010.

The tenants seek a monetary Order for **\$750.00** comprised of the second half of the security deposit owed pursuant to section 38(6) of the *Act* and the recovery of the \$50.00 filing fee paid for this application.

### Analysis

Section 38(1) of the *Act* provides that a landlord must return a tenant's security deposit within 15 days of a tenancy ending, or receiving the tenant's forwarding address in writing, unless the landlord has the written consent of the tenant to retain all or a portion of the security deposit or the landlord files an application for Dispute Resolution to retain all or a portion of the security deposit.

There was no dispute raised by the parties that the landlords did not file an application for Dispute Resolution to retain the tenants' security deposit within 15 days of the end of the tenancy. The matter was heard by a DRO on August 23, 2010 and it was determined that the landlords were not entitled to retain the tenants' security deposit. The DRO could have issued the tenants a monetary Order for the sum of the security deposit at that time consistent with policy guideline #17; however, in this decision did not.

I find that the landlords met their obligations under section 38(1) of the *Act* and therefore, the tenants' application cannot succeed. Without a breach of section 38(1) there is no requirement to return double the security deposit under section 38(6).

However, I find that the tenants are entitled to recover the \$50.00 filing fee paid for this application from the landlords. Although I acknowledge that the landlords were considering their legal avenues after receiving the decision of the August 23, 2010 and that is why they did not issue the tenants their security deposit "forthwith", their delay resulted in the tenants exercising their only available remedy to obtain the their security deposit by filing this application for Dispute Resolution. I am satisfied that the tenants

did not receive their security deposit from the landlord until after this application had been filed.

Therefore, I Order that the landlords reimburse the tenants the amount of **\$50.00**.

Conclusion

I have determined that the tenants' application cannot succeed on the basis that the landlords did not breach section 38(1) of the *Act*. However, I am satisfied that because of their delay in returning the security deposit after receiving the decision of August 23, 2010 the tenants only remedy was to file this application for Dispute Resolution. Therefore, I have ordered that the landlords reimburse the tenants the sum of **\$50.00**.

I grant the tenants a monetary Order for this sum. This Order may be filed with the 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: February 15, 2011.

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Residential Tenancy Branch