



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

### Issue(s) to be Decided

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

### Background and Evidence

This tenant vacated the rental unit on December 31, 2010 and during the move-out inspection provided the landlord with his forwarding address which was written on the move-out inspection report.

The tenant testified that he had contacted the landlord a number of times regarding return of the security deposit and that when the landlord did return the security deposit there had been a deduction of \$100.00 made from it. The tenant did not agree to the landlord deducting any amount from the security deposit and in this application is now seeking return of double the security deposit minus the \$575.00 cheque already sent by the landlord.

The landlords testified that the reason they had not returned all of the security deposit was due to the fact that the tenant removed an ionizer from the property that the landlords had provided the tenant for use during his tenancy. The landlords stated that the tenants had complained of a dog smell in the bedroom and the ionizer, along with \$150.00 compensation for each of the three tenants, was provided to alleviate the odour. The landlords spent \$212.79 for the ionizer and felt that a deduction of \$100.00 was reasonable to recover some of their loss.

The landlords acknowledge that they did not apply through this office to keep part or all of the security deposit and that the security deposit was not returned to the tenant in the timeline stated in Section 38 (1) of the Act.

The tenant stated that he believed the ionizer to be part of the total compensation the landlords were providing the tenants for the odour and that he was within his right to keep it when he vacated the rental unit. A discussion ensue regarding the landlords filing for dispute resolution to recover the cost of the ionizer and dispute resolution filing fee and the tenant agreed in this hearing to have a deduction of \$262.79 made from the security deposit to cover the landlord's costs.

### Law

Residential Tenancy Act **Section 38 Return of security deposit and pet damage deposit** speaks to:

- (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.*
- (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.*

### Analysis

Based on the documentary evidence and testimony of the parties I find that the tenant has met the burden of proving that they are entitled to return of double the security deposit.

The landlords did not have an agreement in writing with the tenant whereby they could retain any portion of the security deposit. The landlords also did not apply to keep all or part of the security deposit and did not return the security deposit to the tenant within 15 days after receiving the tenant's forwarding address per Section 38 of the Act.

Security deposit \$675.00	\$675.00
Security deposit balance due \$100.00 x 2	\$200.00
	= \$875.00
Security deposit returned to tenant by landlord	- \$575.00
Cost of ionizer to landlord	- \$212.79
<b>Balance due to tenant</b>	<b>\$87.21</b>

I find that the tenant has established a claim for \$87.21 in return of 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 **\$87.21**. The tenant is also entitled to recovery of the \$50.00 filing fee.

A monetary order in the amount of **\$137.21** 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: March 25, 2011.

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Residential Tenancy Branch