



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Public Safety and Solicitor General

## **DECISION**

**Dispute Codes**      MNSD, FF, O

### **Introduction**

This hearing was convened by way of conference call to deal with the tenant's application for return of all or part of the pet damage deposit or security deposit, and to recover the filing fee from the landlord for the cost of this application.

The landlord and an agent for the tenant attended the conference call, gave affirmed testimony and were given the opportunity to cross examine each other on their evidence. The landlord also called a witness, a property manager, who also gave affirmed testimony and was subject to cross examination by the tenant's agent.

During the course of the hearing, the landlord's witness questioned the attendance of an agent on behalf of the tenant. A party to a hearing may be represented at the hearing by an agent, and I accept the attendance and evidence provided by that agent.

At the outset of the hearing, the landlord stated that the spelling of her last name on the Tenant's Application for Dispute Resolution is incorrect. The tenant's agent applied to amend the application, which was not opposed by the landlord. The amendment is allowed, and the style of cause in this Decision represents the amended spelling of the landlord's last name.

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

### **Issue(s) to be Decided**

Is the tenant entitled to return of all or part of the pet damage deposit or security deposit?

### **Background and Evidence**

The tenant's agent testified that on January 11, 2011 the tenant looked at the rental unit with the property manager and told him she would like to rent the unit but didn't know when she would be able to. The tenant was awaiting the return of a security deposit from her current landlord and was also hoping to recover half a month's rent as well. The tenant wasn't able to move until February 1, 2011 and told the property manager that. A form from the Ministry was completed and signed by the property manager so that the Ministry would pay the security deposit. The Ministry verified that the property manager was not the landlord and issued a cheque in the amount of \$337.50 to the landlord for the security deposit. A copy of that form was provided in advance of the hearing. The form states that the start date of the rental is January 15 or February 1<sup>st</sup>. The tenant's agent further testified that the landlord cashed the cheque on January 27, 2011.

On January 27, 2011 the tenant went to the apartment with cash to pay for February's rent. The property manager wasn't there when she arrived, but another person was. The property manager showed up and told the tenant that because she didn't move in on January 15, 2011 he rented the unit to someone else and would be keeping the security deposit.

The tenant's agent called the landlord on January 28, 2011 and asked for return of the security deposit. The landlord called the property manager and then called the tenant's agent back stating that the security deposit would be applied to rent and would not be returned to the tenant.

The landlord testified that the property manager tried to rent the unit for January 1, 2011 and the tenant saw the rental unit in December. The tenant had stated that she was going to move in on January 15, 2011. On January 10, 2011 the tenant spoke to the property manager and told him she would try to get the rent for January 15, 2011. He tried to call her but could not reach her. On January 15, 2011 he started running advertisements for the unit, and had arranged a move-in date of February 1, 2011 to another tenant.

The landlord further stated that the tenant's agent called her on January 28, 2011, and at that time, the landlord thought the tenant was moving in. She didn't know that the property manager had rented it to someone else and the property manager didn't know that the landlord had already received the security deposit from the Ministry. Neither the landlord nor the property manager applied for dispute resolution to obtain an order permitting the retention of the security deposit, but the tenant would not return the property manager's calls and the landlord felt she was entitled to keep it.

The property manager testified that he received a call from the tenant in December, and when they met it was agreed that the tenant would rent the unit for January 1, 2011 and she would return with the security deposit and rent money within the next couple of days but she didn't show up, and did not move in on January 1. He had cancelled the advertisements and appointments to view the rental unit.

He further testified that the tenant called him advising that she could not get her security deposit back from the previous landlord and stated she would be able to move in on the 15<sup>th</sup> of January, and he signed the Ministry form for the security deposit. The tenant didn't return until after January 15, 2011. He stated that he re-posted the advertisements toward the end of January. During cross examination, the property manager admitted that when the tenant arrived on January 27 to pay the rent, he told her that the unit was already rented.

### **Analysis**

The *Residential Tenancy Act* states that a landlord must return a security deposit to the tenant within 15 days of the later of the date the tenancy ends and the date the tenant provides a forwarding address in writing, or apply for dispute resolution claiming against the security deposit within that time. If the landlord does neither, the tenant is entitled to double recovery of the security deposit or pet damage deposit, or both. In this case, I find that the tenancy ended on January 27, 2011 after the landlord's property manager informed the tenant that the unit had been rented to someone else. However, I have no evidence that the tenant provided her forwarding address in writing to the landlord. The landlord is put on notice that the forwarding address of the tenant is printed on the Tenant's Application for Dispute Resolution, and the 15 day period starts from April 19, 2011.

I further find that the landlord has not applied for dispute resolution and the tenant's claim for return of that money has been established. The parties agree that the security deposit amount paid by the tenant was \$337.50. The tenant is also entitled to recovery of the \$50.00 filing fee for the cost of this application.

In the event that the landlord does not return the security deposit to the tenant within 15 days from April 19, 2011, the tenant will be at liberty to apply for double recovery of the security deposit paid to the landlord.

### **Conclusion**

For the reasons set out above, I hereby grant a monetary order in favour of the tenant in the amount of \$387.50. This order may be filed in the Provincial Court of British Columbia, Small Claims division 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: April 20, 2011.

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Residential Tenancy Branch