



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Dispute Codes:**

MNSD, FF, O

### **Introduction**

This is the Tenant's application for a monetary award in the amount of the security deposit and double the amount of the key deposit; and for recovery of the cost of the filing fee from the Landlord.

Both parties gave affirmed testimony at the Hearing.

It was established that the Notice of Hearing documents were mailed to the Landlord, by registered mail, on December 30, 2010. It was also established that on April 21, 2011, the Landlord mailed the Tenant, by registered mail, copies of its documentary evidence.

### **Issues to be Decided**

- Is the Tenant entitled to a monetary award in the equivalent of the security deposit pursuant to the provisions of Section 38 of the Act?
- Is the Tenant entitled to a monetary award in the equivalent of double the amount of the key deposit?

### **Background and Evidence**

#### **Facts on which the parties agree:**

The Tenant paid a security deposit in the amount of \$550.00 and a pet damage deposit in the amount of \$550.00 on June 23, 2008. The Tenant paid a deposit in the amount of \$10.00 for a laundry card on August 6, 2008. The tenancy ended on November 30,

2010 and the Tenant provided the Landlord with a forwarding address on October 31, 2010 and again on the move-out Condition Inspection Report.

On December 24, 2010, the Tenant received a cheque in the amount of \$1118.46, representing return of the security and pet damage deposit, together with accrued interest, and the fee for the laundry card.

The Tenant gave the following testimony:

The Tenant returned the keys to the Landlord on November 29, 2010, but the Landlord did not reimburse the Tenant for the key deposit she paid. At the beginning of the tenancy, the Tenant paid the Landlord's agent "John" \$30.00 cash (\$10.00 for each of two keys and \$10.00 for the laundry card). "John" was acting as building manager because there was no manager at that time. The Tenant asked for a receipt, but was not provided one. The Tenant completed the move-in Inspection Report by herself.

The Tenant and the Landlord's agent "Paul" performed a move-out inspection. "Paul" asked the Tenant if she had a copy of the move-in Condition Inspection Report because he could not locate one.

The Tenant e-mailed the Landlord on December 16, 2010, advising that she had not received the security deposit. The Landlord replied that it was probably stuck in the Christmas mail. The Tenant emailed the Landlord again on December 22, 2010, advising that she had still not received the cheque. The Landlord's agent responded that the cheque was mailed on December 9, 2010. The Tenant asked the Landlord to re-issue the cheque and courier it to the Tenant by 5:00 p.m., December 23, 2010, as the Tenant was going out of town. The cheque arrived on December 24, 2010, after the Tenant had already left.

The Tenant seeks compensation pursuant to the provisions of Section 38(6) of the Act because she did not receive the security deposit refund within the 15 days provided by

the Act. She also seeks an award in the equivalent of double the key and laundry card deposits (total of \$60.00) because they were not returned within the 15 day time frame.

The Landlord's agent gave the following testimony:

There is no record of a key deposit being made on the Tenant's file, only the laundry card fee. There is no copy of a receipt for the laundry card fee. The move-in Condition Inspection report was done and signed by "John" on August 2, 2008. The Landlord's agent cannot confirm whether a copy was provided to the Tenant.

The Landlord returned the security deposit to the Tenant, in full with interest, by mailing a cheque to her forwarding address on December 9, 2010, by regular mail. The Landlord cannot be held responsible for Canada Post delivering the mail in a timely fashion. When the Tenant advised that she had still not received the cheque on December 22, the Landlord acted quickly to cancel and replace the cheque. The Landlord provided a copy of the banking information confirming that the cheque written on December 9, 2010 was cancelled.

Because of the Christmas holiday season, a signing authority was not available to sign the cheque until December 23, 2010. The Landlord's agent told the Tenant that she could pick up the cheque on December 23, 2010, but the Tenant asked her to courier it instead.

**Analysis**

Section 38(1) of the Act provides that at the end of a tenancy, after receipt of a tenant's forwarding address in writing, a landlord has 15 days to either:

1. **repay** the security deposit in full, together with any accrued interest; or
2. make an application for dispute resolution claiming against the security deposit.

The Act does not require that a tenant **receive** the security deposit within 15 days. I accept the Landlord's agent's testimony that she mailed the security deposit, by regular mail, to the Tenant at her forwarding address on December 9, 2010. I find that it was reasonable to infer that mail might be delayed over the Christmas period. The Tenant advised the Landlord on December 16 that she had not yet received the security deposit. The Tenant did not contact the Landlord again until December 22 to advise she had still not received the cheque. I find that the Landlord acted expeditiously to replace the lost cheque. The Tenant's application for a monetary award in the equivalent of the security and pet damage deposits is dismissed.

The Act requires landlords to provide receipts for cash. I accept the Tenant's testimony that she paid a \$10.00 fee for each of 2 keys.

The Act defines a "security deposit" as money paid to a landlord that is to be held as security for liability or obligation of the tenant, but does not include a fee prescribed under Section 97(2)(k) (refundable and non-refundable fees). A key deposit is a refundable fee charged by a landlord and therefore is exempt from the provisions of Section 38 of the Act. Therefore, I allow this portion of the Tenant's claim in the amount of \$20.00.

The Tenant has been largely unsuccessful in her claim and I find that she is entitled to recover only a portion of the filing fee from the Landlord, in the amount of \$5.00.

### **Conclusion**

I hereby grant the Tenant a Monetary Order in the amount of **\$25.00** for service upon the Landlord. This Order may be filed in the Provincial Court of British Columbia (Small Claims) 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: May 24, 2011.

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Residential Tenancy Branch