



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNSD FF

### Introduction

This hearing dealt with an Application for Dispute Resolution by the Tenant for a Monetary Order for the return of double her security deposit and to recover the cost of the filing fee from the Landlords for this application.

Service of the hearing documents, by the Tenant to the Landlord, was done in accordance with section 89 of the *Act*, sent via registered mail. The Landlords confirmed receipt of the hearing documents.

The parties appeared at the teleconference hearing, gave affirmed testimony, were provided the opportunity to present their evidence orally, in writing, and in documentary form.

### Issues(s) to be Decided

1. Have the Landlords breached the *Residential Tenancy Act*, regulation or tenancy agreement?
2. If so, has the Tenant met the burden of proof to obtain a monetary order as a result of that breach?

### Background and Evidence

I heard undisputed testimony that the parties entered into a month to month tenancy that began on July 1, 2006 and ended on September 30, 2010. Rent was payable on the first of each month in the amount of \$500.00 and on July 1, 2006 the Tenant paid \$250.00 as the security deposit. No move-in inspection form or move-out inspection forms were completed. The Landlord did add a page to the tenancy agreement which listed defects of the rental unit on which the Tenant signed at the outset of the tenancy.

The Tenant provided the Landlords with her forwarding address in writing on January 20, 2011 in a letter that was mailed to the Landlords. The Tenant testified that on

approximately January 24, 2011 she received letter back from the Landlords with a cheque in the amount of \$80.00 as partial refund of her security deposit.

The Landlords confirmed that they received the Tenant's forwarding address in a letter they received on January 23, 2011. They mailed the Tenant a cheque for \$80.00 on January 24, 2011 as partial return of the security deposit and they retained the rest of the deposit for damages to the unit and until they received their property back from the Tenant.

The Landlords confirmed that they did not apply for dispute resolution to obtain an Order allowing them to retain a portion of the security deposit; they do not possess an Order authorizing the Landlords to retain money from the security deposit, and the Landlords do not have the Tenant's permission, in writing at the end of the tenancy, to keep a portion of the security deposit.

The female Landlord read out a section of their tenancy agreement which states that if cleaning of the rental unit is not done in accordance with the tenancy agreement then the "security deposit will be withheld". The Landlords stated that the Tenant signed this tenancy agreement therefore they have the Tenant's permission, in writing, for them to keep a portion of the security deposit.

### Analysis

All of the testimony and documentary evidence was carefully considered.

I find that in order to justify payment of loss under section 67 of the *Act*, the Applicant Tenant would be required to prove that the other party did not comply with the *Act* and that this non-compliance resulted in losses to the Applicant pursuant to section 7. It is important to note that in a claim for damage or loss under the *Act*, the party claiming the damage or loss; in this case the Tenant bears the burden of proof.

In this case the Landlords issued the Tenant a cheque for \$80.00 on January 24, 2011 as partial refund of the security deposit. The Landlords have not applied for dispute resolution to keep the security deposit, do not have an Order allowing them to keep the \$63.74, and they do not have the Tenant's written consent to retain the security deposit provided at the end of the tenancy.

Section 20 (e) of the *Act* provides a landlord must not require, or include as a term of a tenancy agreement, that the landlord automatically keeps all or part of the security deposit or the pet damage deposit at the end of the tenancy agreement.

The evidence supports that the tenancy ended September 30, 2010 and the Landlords received the Tenant's forwarding address in writing on January 23, 2011.

Section 38(1) of the *Act* stipulates that if within 15 days after the later of: 1) the date the tenancy ends, and 2) the date the landlord receives the tenant's forwarding address in writing, the landlord must repay the security deposit, to the tenant with interest or make application for dispute resolution claiming against the security deposit. In this case the Landlords were required to return the Tenant's security deposit in full or file for dispute resolution no later than February 7, 2011.

Based on the above, I find that the Landlords have failed to comply with Section 38(1) of the *Act* and that the Landlords are now subject to Section 38(6) of the *Act* which states that if a landlord fails to comply with section 38(1) the landlord may not make a claim against the security and pet deposit and the Landlords must pay the tenant double the security deposit.

Based on the aforementioned I find that the Tenant has succeeded in proving the test for damage or loss as listed above and I approve her claim for the return of double her security deposit plus interest.

The Tenant has succeeded with her application therefore I award recovery of the \$50.00 filing fee.

**Monetary Order** – I find that the Tenant is entitled to a monetary claim as follows:

Doubled security deposit 2 x \$250.00	\$500.00
Interest owed on the Security Deposit of \$250.00 from July 1, 2006 to June 7, 2011	8.21
Filing Fee	50.00
<b>SUBTOTAL OWED THE TENANT</b>	<b>\$558.21</b>
LESS: Partial payment issued January 24, 2011	-80.00
<b>TOTAL AMOUNT DUE TO THE TENANT</b>	<b>\$478.21</b>

I have included with my decision a copy of "A Guide for Landlords and Tenants in British Columbia" and I encourage the parties to familiarize themselves with their rights and responsibilities as set forth under the *Residential Tenancy Act*.

Conclusion

A copy of the Tenant's decision will be accompanied by a Monetary Order for **\$478.21**. The order must be served on the respondent Landlords and is enforceable through the Provincial Court 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: June 07, 2011.

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Residential Tenancy Branch