



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDC, OPT

### Introduction

This matter dealt with an application by the Tenant for money owed or compensation for damage or loss under the Act, regulations or the tenancy agreement and for an order of Possession of the rental unit.

The Tenant said he served the Landlord with the Application and Notice of Hearing (the “hearing package”) by registered mail on August 21, 2010. Based on the evidence of the Tenant, I find that the Landlord was served with the Tenant’s hearing package as required by s. 89 of the Act and the hearing proceeded with both the Landlord and the Tenant in attendance.

### Issues(s) to be Decided

1. Is there a loss or damages to the Tenant and if so How much?
2. Is the Tenant entitled to compensation for loss or damages and if so how much?
3. Is the Tenant entitled to an Order of Possession for the rental unit?

### Background and Evidence

This tenancy started on July 1, 2000 as a month to month tenancy. The tenancy ended August 31, 2008. Rent was \$475.00 per month payable in advance of the 1<sup>st</sup> day of each month. The Tenant paid a security deposit of \$250.00 on July 1, 2000.

The Tenant said that he moved out of the rental unit on August 31, 2008 and gave the Landlord a forwarding address in writing on September 3, 2008. The Tenant said there was no move in or move out condition inspection reports completed. The Tenant continued to say that he cleaned the unit before leaving and he asked the Landlord for his deposit back. He said the Landlord said there was damages to the stove, toilet and the carpet needed replacing so the Landlord said he would not give him the security deposit back.

The Landlord said he submitted as evidence a list of repairs that he did after the Tenant moved out and he felt that the repairs were due to damage the Tenant caused during the tenancy. The Landlord said the damages include nail and hook holes in the walls, the drain was plunged with grease and the carpets needed replacing.

The Landlord said he did receive a forwarding address in writing from the Tenant on September 3, 2008 and he did not return the deposit or make an application with the *Residential Tenancy Branch* to retain the security deposit for damages to the rental unit.

The Tenant said he cleaned the unit before he left and he believes that the damages the Landlord is claiming are due to normal wear and tear.

### Analysis

Section 38 (1) says that 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.

And Section 38 (6) says 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.

I find from that the Tenant did give the Landlord a forwarding address in writing on September 3, 2008. The Landlord did not repay security deposit to the Tenant within 15 days of the end of the tenancy or 15 days after receiving the Tenant's forwarding address in writing, nor did the Landlord apply for dispute resolution. Consequently I find for the Tenant and grant an order for double the security deposit of \$250.00 plus

accrued interest of \$19.32 from July 1, 2000 to December 15, 2010 in the amount of \$269.32 X 2 =538.64.

As the Tenant was successful in this matter I further order the Tenant to recover the filing fee of \$50.00 for this proceeding from the Landlord. Pursuant to section 67 a monetary order for \$588.64 will be issued to the Tenant. This Monetary order represents double the security deposit and accrued interest in the amount of \$538.64 and the filing fee of \$50.00.

### Conclusion

I find in favour of the Tenant's monetary claim. Pursuant to sections 38 of the Act, I grant a Monetary Order for \$588.64 to the Tenant. The order must be served on the Respondent and is enforceable through the Provincial Court of British Columbia (small claims 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*.

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Residential Tenancy Branch