



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNSD, FF

### Introduction

This matter dealt with an application by the Tenant for the return of a security deposit and to recover the filing fee for this proceeding.

The Tenant said he served the Landlord with the Application and Notice of Hearing (the "hearing package") by personal delivery on June 22, 2011. 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 all parties in attendance.

### Issues(s) to be Decided

1. Is the Tenant entitled to the return of the security deposit?

### Background and Evidence

This tenancy started on August 14, 2010 as a month to month tenancy. The tenancy ended May 15, 2011. Rent was \$2,400.00 per month payable in advance of the 1<sup>st</sup> day of each month. The Tenant paid a security deposit of \$1,200.00 on August 14, 2010.

The Tenant said that he moved out of the rental unit on May 15, 2011 and gave the Landlord a forwarding address in writing on the same day May 15, 2011 when he returned what he thought were the keys. The Tenant said no condition inspection reports were completed and signed on move in and on move out of the rental unit. The Tenant continued to say that he left the unit in a reasonable condition and he asked the Landlord for his security deposit back. The Tenant said the Landlord has not returned his security deposit.

The Landlord said the Tenant left the room in an unclean state and there were damages to the walls which the landlord had to repair in order to rent the room out. The Landlord said he kept the Tenant's security deposit to cover the costs of cleaning and repairing the room. The Landlord agreed there were no condition inspection reports done and the Landlord said they did not apply to the Residential Tenancy Branch for an order to retain the Tenant's security deposit.

During the hearing the Landlord said the facility they operate is a level one assisted living home for senior citizens and is not under the jurisdiction of the Residential Tenancy Branch. The Landlord continue to say the occupancy agreement that he provided in evidence shows the agreement is an occupancy agreement not a tenancy agreement and therefore it is not in the jurisdiction of the Residential Tenancy Branch. As well the Landlord said the facility is an assisted living facility, which again takes it out of the jurisdiction of the Residential Tenancy Branch. The Landlord said the Tenant's application should be cancelled.

### Analysis

After a careful review of the Landlord's testimony and evidence with regard to whether or not the Residential Tenancy Branch has jurisdiction in this situation. I referred to Act, specifically section 4 of the Act that says what the Act does not apply to. The Landlord said the facility in question is an assisted living accommodation that would be included as a community care facility, under the Community Care and Assisted Living Act. I reviewed the Occupancy Agreement provided by the Landlord to determine if the facility is an assisted living facility. The Occupancy Agreement submitted by the Landlord dated August 14, 2010 indicates in section (1) that the facility is for seniors that are able to direct and provide their own day –to- day needs, and they will manage their own medications and be independently mobile. In addition, section 5 of the Occupancy Agreement states that the Landlord does not provide nursing care or personal assistance to the occupants. Other terms in the agreement refer to the rules of the facility and the occupant's obligations to the Landlord. I find that the Occupancy agreement does constitute assisted living by providing only meals and housekeeping services as these services can be part of a Tenancy agreement; therefore I find the Residential Tenancy Branch does have jurisdiction in this situation and this is a tenancy agreement that is governed by the Residential Tenancy Act.

Consequently 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 accept the Tenant's testimony that he gave the Landlord a forwarding address in writing on August 14, 2011 and the Tenancy ended on August 14, 2011. 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 by August 29, 2011. Consequently I find for the Tenant and award monetary compensation for double the security deposit of \$1,200.00 in the amount of  $\$1,200.00 \times 2 = \$2,400.00$ .

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 38 and 67 a monetary order for \$2,450.00 has been issued to the Tenant. This Monetary order represents double the security deposit in the amount of \$2,400.00 and the filing fee for this proceeding in the amount of \$50.00 for a total of \$2,450.00.

## Conclusion

I find in favour of the Tenant's monetary claim. Pursuant to sections 38 and 67 of the Act, I grant a Monetary Order for \$2,450.00 to the Tenant. The order must be served on the Respondents 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