



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### Dispute Codes:

MNSD, FF

### Introduction

This hearing was scheduled in response to the tenant's Application for Dispute Resolution, in which the tenant has made application for a monetary Order for return of the security deposit and to recover the filing fee from the landlord for the cost of this Application for Dispute Resolution.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the evidence and testimony provided.

### Issue(s) to be Decided

Are the tenants entitled to return of double the deposit paid?

Are the tenants entitled to filing fee costs?

### Background and Evidence

The tenancy commenced in December 2010; the tenants vacated in May, 2011. A \$700.00 deposit as paid at the start of the tenancy.

The landlord confirmed receipt of a June 3, 2011, letter from the tenants, requesting return of the deposit paid; the landlord responded by given the tenants a list of damages

and costs incurred. The deposit was not returned. Copies of both documents were submitted as evidence.

The tenancy agreement supplied as evidence included a term which referenced the deposit and the ability of the landlord to make deductions from the deposit. The landlord did not claim against the deposit and did not return the deposit.

### Analysis

Section 38(1) of the Act determines that the landlord must, within 15 days after the later of the date the tenancy ends and the date the landlord received the tenant's forwarding address in writing, repay the deposit or make an application for dispute resolution claiming against the deposit. If the landlord does not make a claim against the deposit paid, section 38(6) of the Act determines that a landlord must pay the tenant double the amount of security deposit.

The amount of deposit owed to a tenant is also contingent on any dispute related to damages and the completion of move-in and move-out condition inspections. In this case there is a dispute related to damages; however, the landlord has not submitted an application claiming against the deposit.

Section 6(3) of the Act requires terms of tenancy agreements to comply with the legislation; terms that are inconsistent with the Act are not enforceable. Therefore, terms that allow deductions or retention of the deposit in conflict with the Act, are unenforceable.

As the landlord has failed to return the deposit or claim against the deposit within 15 days of June 3, 2011, I find, pursuant to section 38(6) of the Act, that the tenants are entitled to return of double the \$700.00 deposit.

I find that the tenant's application has merit, and I find that the tenants are entitled to recover the filing fee from the landlord for the cost of this Application for Dispute Resolution.

A copy of the *Guide for Landlords and Tenants in British Columbia* is enclosed for each party.

Conclusion

I find that the tenants have established a monetary claim, in the amount of \$1,450.00, which is comprised of double the \$700.00 deposit and \$50.00 in compensation for the filing fee paid by the tenant for this Application for Dispute Resolution.

Based on these determinations I grant the tenants a monetary Order for \$1,450.00. In the event that the landlord does not comply with this Order, it may be served on the landlord, filed with the Province of British Columbia Small Claims Court 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: September 26, 2011.

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Residential Tenancy Branch