



# 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 tenants have made application for a monetary Order for return of the security deposit and pet deposit and to recover the filing fee from the landlord for the cost of this Application for Dispute Resolution.

The tenant provided affirmed testimony that copies of the Application for Dispute Resolution and Notice of Hearing were sent to the landlord on July, 16, 2011, via registered mail at the address noted on the Application. A Canada Post tracking number and receipt was provided as evidence of service. The mail was not returned by Canada Post. The tenants used the address for the landlord, which was the same as the rental unit, as the landlord lived at the rental unit property.

These documents are deemed to have been served on the fifth day after mailing in accordance with section 89 of the Act; however the landlord did not appear at the hearing. Failure to retrieve registered mail does not allow a party to avoid service.

### Issue(s) to be Decided

Are the tenants entitled to return of the deposit paid?

Are the tenants entitled to filing fee costs?

### Background and Evidence

The tenancy commenced on June 14, 2011; this was a fixed term ending on June 14, 2011, at which point the tenant was to vacate. A move-in condition inspection was completed; a copy of the report and the tenancy agreement were not given to the tenants. The landlord did not arrange a move-out condition inspection report.

On June 14, 2011, the tenants left the keys and their forwarding address on the counter at the rental unit. Since that time they have talked to the landlord on 3 occasions, the landlord initially said he would return the deposit and then said there were hydro costs.

The tenants have not received return of any portion of the deposits paid.

The tenants provided a copy of a receipt indicating payment of the rent for 2 months, in the sum of \$1,600.00 and payment of the deposits, totaling \$800.00. The receipt was issued on April 14, 2011, and signed by the landlord.

### 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 deposits or make an application for dispute resolution claiming against the deposits. If the landlord does not make a claim against the deposits paid, section 38(6) of the Act determines that a landlord must pay the tenant double the amount of security and pet 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 no dispute related to damages.

I have no evidence before me that a move-out condition inspection was completed as required by the Act. I find that the tenants provided their forwarding address to the landlord on June 14, 2011 and that the landlord has not returned the deposit or submitted a claim against the deposits, as required by the Act. Therefore, I find that the tenants are entitled to return of double the \$400.00 security and \$400.00 pet deposit paid to the landlord.

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.

### Conclusion

I find that the tenants have established a monetary claim, in the amount of \$1,650.00, which is comprised of double the pet and security deposits paid and \$50.00 in

compensation for the filing fee paid by the tenants for this Application for Dispute Resolution.

Based on these determinations I grant the tenants a monetary Order for \$1,650.00. 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: October 17, 2011.

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Residential Tenancy Branch