



# 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.

The tenant provided affirmed testimony that copies of the Application for Dispute Resolution and Notice of Hearing were sent on July 28, 2011, to the landlord via registered mail at the address noted on the Application. A Canada Post tracking number was provided as evidence of service.

The tenant testified that in 2006 the landlord sent them a letter indicating that the landlord's name had changed and that the tenant's should continue to use the address provided by the landlord. The address was indicated on the letterhead of the correspondence.

In July, 2010, the tenants confirmed with the building manager, that the landlord's address for service remained the same.

The registered mail sent to the landlord was returned to the tenants as unclaimed.

A respondent may not avoid service by refusing to claim registered mail. Therefore, I find that these documents are deemed to have been served in accordance with section 89 of the Act; however the landlord did not appear at the hearing.

### 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 July 1, 2004; a copy of the move-in condition inspection report was supplied as evidence. The tenant's submitted a copy of a print-out obtained from the landlord which included the tenant's forwarding address; a notation that a deposit in the sum of \$380.00 had been paid; that the tenant's had vacated the unit on December 31, 2010 and that deductions for carpet cleaning and shampoo in the sum of \$145.00 and \$135.00 respectively, were to be made from the deposit. A hand-written note next to the deductions indicated "tenant did..."

The tenant testified that they did not sign anything allowing the landlord to retain any portion of the deposit. The tenants stated a condition inspection was completed at the end of the tenancy and they were told the unit was in good condition. The tenants supplied a copy of a receipt for carpet cleaning they had completed.

In either March or April, 2011, the tenants received a cheque in the sum of \$100.00 but they were unable to cash the cheque as their name had been incorrectly entered in the landlord's system. This cheque was sent to the forwarding address indicated on the landlord's print-out and on the tenant's application for dispute resolution.

The tenants have yet to receive any of their 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.

I have no evidence before me that the tenants agreed in writing at the end of the tenancy, to any deductions from their deposit. I find that the landlord did possess the tenant's forwarding address, which they used to return a portion of the deposit in the form of a non-negotiable cheque in an amount less than the deposit, plus interest. Therefore, pursuant to section 38(6) of the Act, I find that the tenants are entitled to return of double the \$380.00 deposit paid to the landlord plus interest in the sum of \$13.45.

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 \$823.45, which is comprised of double the deposit in the sum of \$760.00, interest of \$13.45 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 \$823.45. 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 28, 2011.

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Residential Tenancy Branch