



# 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

Is the tenant entitled to return of the deposit paid?

Is the tenant entitled to filing fee costs?

### Background and Evidence

The tenancy commenced on May 1, 2007; a deposit in the sum of \$757.50 was paid at that time. The tenancy ended on April 30, 2011.

A move-in and move-out condition inspection report was completed; however, the move out report cannot be located by the landlord and the tenant was not provided a copy. The tenant stated that she had given her written forwarding address on either March 30 or 31, 2011; when she gave notice ending the tenancy. She also wrote the address on the inspection report completed on April 30, 2011.

The tenant had agreed there was damage to a wall and counter; but no amount of deduction from the deposit had been agreed upon. The tenant does not wish to negotiate an agreement with the landlord in relation to any damages; the landlord has not submitted a claim against the deposit.

The parties agreed that the tenant did receive \$645.00; the tenant stated this amount was returned to her on August 8, 2011. The landlord retained funds for cleaning costs. The landlord stated that when the tenancy ended there was a postal strike; however, no other method of delivery of the deposit was utilized.

### 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 the landlord indicated they have a claim for damages, but have not made an application for dispute resolution.

Condition inspections were completed; but the final report cannot be located and the tenant was not provided a copy of the report. The landlord chose to return a portion of the deposit and withheld money for cleaning costs. Therefore, as the landlord failed to return all of the deposit to the tenant within 15 days of April 30, 2011, I find that the tenant is entitled to return of double the \$757.50 deposit paid to the landlord, plus \$19.11 interest; less \$645.00 previously returned.

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

### Conclusion

I find that the tenant has established a monetary claim, in the amount of \$1584.11, which is comprised of double the deposit, interest and \$50.00 in compensation for the filing fee paid by the tenant for this Application for Dispute Resolution.

The landlord has paid the tenant \$645.00; which will be deducted from the amount owed to the tenant.

Based on these determinations I grant the tenant a monetary Order for \$939.11. 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: November 03, 2011.

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Residential Tenancy Branch