



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNSD and FF

### Introduction

This application initiating this hearing was brought by the tenant on October 12, 2011 seeking a Monetary Order for return of a portion of her security deposit that was retained by the landlord without her consent and without the landlord having made application to claim on it.

### Issues to be Decided

This application requires a decision on whether the tenant is entitled to a monetary award for return of the contested portion of her security deposit and whether that amount should be doubled.

### Background and Evidence

This tenancy ran from June 1, 2011 to June 30, 2011. The landlord holds a security deposit of \$500.

During the hearing, the tenant presented a copy of a letter to the landlord dated September 2, 2011 providing her forwarding address and confirming an agreement made August 31, 2011 that the landlord could retain \$100 against the cost of the utilities.

The tenant stated that she had left the tenancy early after the landlord advised her that he had sold the property and that the new owners did not wish to have tenants. The tenant, relying on that information, accelerated her plan to purchase a home and left the rental unit early.

The landlord stated that the offer to purchase the rental unit had not proceeded but that the property did sell in September. He said he had kept the security deposit because the tenant had not given full notice as required under section 45 of the *Act*.

Condition inspection reports were not completed at the time of the tenant moving in or out.

### Analysis

Section 38(1) of the *Act* allows a landlord 15 days from the latter of the end of the tenancy or receipt of the tenant's forwarding address to return a security deposit or file for dispute resolution to make claim against it unless the tenant has agreed otherwise in writing as per section 38(4).

Section 38(1)(c) requires that the deposits be returned with interest at the rate prescribed by *regulation*.

Section 38(6) of the *Act* states that, if a landlord does not comply with section 38(1) of the *Act*, the landlord must pay the tenant double the amount of the deposit(s).

In the present matter, I find that the landlord did retain \$400 of the security deposit without the tenant's consent or without having made application to claim upon it.

As the application has succeeded on its merits, I further find that the tenant is entitled to recover the filing fee for this proceeding from the landlord.

Thus, I find that the tenant is entitled to a Monetary Order calculated as follows:

Amount of security deposit retained without consent	\$400.00
Filing fee	50.00
<b>TOTAL</b>	<b>\$850.00</b>

Conclusion

The tenant's copy of this decision is accompanied by a Monetary Order for **\$850.00**, enforceable through the Provincial Court of British Columbia, for service on the landlord.

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: December 28, 2011.

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Residential Tenancy Branch