



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNSD, FF

### Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant for a Monetary Order for the return of her security deposit and pet damage deposit and recovery of her filing fee.

The tenant and landlord appeared and the hearing process was explained. Thereafter the parties gave affirmed testimony and were provided the opportunity to present their evidence orally and in documentary form, and to respond each to the other party, and make submissions to me.

### **Preliminary Issue:**

The landlord testified that he sent in a package of evidence to the Residential Tenancy Branch in late November, with a copy to the tenant. A search of the records confirmed that the documents had not been received as of the day of the hearing. The landlord stated that the documents were delivered by regular mail, and therefore had no proof of delivery. I therefore declined to allow the landlord to submit his documents on the day of the hearing as he was unclear of the date the documents were mailed and due to the delay in mailing the documents.

### Issue(s) to be Decided

Is the tenant entitled to a Monetary Order under sections 38, 67 and 72 of the *Residential Tenancy Act* (the "Act")?

### Background and Evidence

This two year, fixed term tenancy began on June 15, 2011, and it actually ended on September 15, 2011, monthly rent was \$1,150.00, and a security deposit and pet damage deposit of \$575.00 each was paid on or about June 15, 2011.

The tenant gave affirmed testimony that the landlord was provided the tenant's written forwarding address on the "check-out list" signed on or about September 14, 2011 with the landlord. The tenant stated that the landlord has sent her mail at her new address since the end of the tenancy.

The tenant stated that the landlord has not returned her security deposit or pet damage deposit and is seeking monetary compensation for their return.

The tenant's relevant evidence included a copy of the Addendum to the tenancy agreement, which stated, among other things, that the "tenant agrees to allow the landlord to keep the full amount of security deposit and pet damage deposit as payment for not completing the agreed two years and one half month rental period ending June 30<sup>th</sup>, 2013."

The landlord acknowledged receiving the tenant's written forwarding address on the check-out list on or about September 14, 2011, and that has not filed for Dispute Resolution. The landlord stated that he is entitled to keep the tenant's security deposit and pet damage deposit due to the clause listed in the addendum, quoted above, and the condition inspection report.

Further, the landlord acknowledged that he had not returned the tenant's security deposit and pet damage deposit.

I note that a copy of the condition inspection report had not been submitted into evidence.

### Analysis

Based on the above testimony and evidence, and on a balance of probabilities, I find as follows:

In order to justify payment of loss under section 67 of the *Act*, the applicant/tenant bears the burden to prove that the other party did not comply with the *Act* and that this non-compliance resulted in losses to the Applicant pursuant to section 7.

I grant the tenant's application for Dispute Resolution and Order that the landlord pay the tenant double her security deposit and pet damage deposit pursuant to section 38(6) of the *Act*.

Section 38(1) of the *Act* stipulates that if within 15 days after the later of: 1) the date the tenancy ends, and 2) the date the landlord receives the tenant's forwarding address in writing, the landlord must repay the security deposit and pet damage deposit, to the tenant with interest or make application for dispute resolution claiming against the security deposit. [Emphasis added]

The failure to comply with this section entitles the tenant to be reimbursed double her security deposit and pet damage deposit.

I accept the uncontradicted testimony of the parties that the tenancy ended on September 15, 2011, the landlord was provided the tenant's written forwarding address on or about September 14, 2011, and has not returned the tenant's security deposit or pet damage deposit.

The landlord did not apply for dispute resolution to keep all or part of the security deposit and does not have an Order allowing him to keep the security deposit and pet damage deposit.

I also reject the landlord's argument that he was entitled to retain the security deposit and pet damage deposit, based upon the addendum, due to section 20 of the Act, which states that a landlord may not "require, or include as a term of a tenancy agreement, that the landlord automatically keeps all or part of the security deposit or the pet damage deposit at the end of the tenancy agreement."

I find that the tenant has established a total monetary claim for the sum of **\$2,350.00**.

This sum is comprised of **double** the security deposit of **\$575.00**, **double** the pet damage deposit of \$575.00, plus the **\$50.00** filing fee.

### Conclusion

I grant the tenant's application and have issued a monetary Order for the sum of **\$2,350.00**. The landlord is directed to forthwith transmit the amount of \$2,350.00 to the tenant.

I am enclosing a monetary order for \$2,350.00 with the tenant's Decision. This order is a **legally binding, final order**, and it may be filed in the Provincial Court of British Columbia (Small Claims) should the landlord fail to comply with this monetary.

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 14, 2011.

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Residential Tenancy Branch