



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNSD, MNCD, FF

### Introduction

This hearing dealt with an application for Dispute Resolution by the tenant seeking the return of his security deposit and recovery of the filing fee.

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

### Issue(s) to be Decided

Have the landlords breached the tenancy agreement, Residential Tenancy Act (the "Act") and regulations entitling the tenant to the return of double his security deposit and to recover the filing fee?

### Background and Evidence

This one year, fixed term tenancy began on August 1, 2011, actually ended on September, 30, 2011, pursuant to a mutual agreement to end the tenancy, monthly rent was \$1,600.00 and the tenant paid a security deposit of \$800.00 on July 29, 2011. The tenant also paid a deposit of \$70.00 for key, door opener, parking pass and FOB.

The tenant testified and supplied evidence that the landlords were provided his written forwarding address on the condition inspection report on September 30, 2011. The tenant submitted that he did not sign over any portion of his security deposit and that the landlords did not return his security deposit, until he received a portion of that amount, \$271.07, on or shortly after December 12, 2011.

The testimony and evidence of the landlord confirmed that they received the tenant's written forwarding address on September 30, 2011, and that they believed they were entitled to retain some portion of the security deposit for alleged damages and because the tenant did not issue a written notice to them that he disagreed to a deduction.

The landlords submitted that they used the total of \$870.00 as a security deposit, and did not distinguish the \$70.00 for a key deposit as apart from the security deposit in making deductions.

### Analysis

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

I grant the tenant's application for Dispute Resolution and Order that the landlord pay the tenant double his security deposit pursuant to section 38(6) of the *Act*. I include the amount of \$70.00 for consideration of a return of the security deposit, due to the landlords' testimony and evidence indicating that they considered this amount as part of the security deposit in making the deductions.

Section 38(1) of the *Act* requires a landlord to either return a tenant's security deposit or to file an application for Dispute Resolution to retain the security deposit within 15 days of receiving the tenant's forwarding address in writing. Section 38(6) of the *Act* states that if a landlord fails to comply, or follow the requirements of section 38(1), then the landlord must pay the tenant double the security deposit.

I accept the evidence of the tenant and the confirmation by the landlord that the landlord received the tenant's written forwarding address and that the landlords did not file an application for Dispute Resolution making a claim against the tenant's security deposit. In contravention of the *Act* the landlord made a deduction from the tenant's security deposit without his written consent prior to returning a portion of the security deposit.

Having granted the tenant's application, I also grant the tenant's request to recover the filing fee paid for submitting this application.

I therefore find the tenant has established a total monetary claim for the sum of **\$1,518.93**.

This sum is comprised of double the security deposit of \$870.00, plus the \$50.00 filing fee. From this sum I deduct the sum of \$271.07 which the landlords have already returned to the tenant.

Conclusion

I grant the tenant's application and have issued a monetary Order for the sum of **\$1,518.93**.

I am enclosing a monetary order for **\$1,518.93** 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 landlords fail to comply with this monetary order.

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: January 04, 2012.

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Residential Tenancy Branch