



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNSD, MNDC, FF

### Introduction

This hearing dealt with an application by the tenant for return of double the security deposit, money owed or compensation due to damage or loss and recovery of the filing fee. Both parties participated in the conference call hearing.

### Issue(s) to be Decided

Is the tenant entitled to any of the above under the Act.

### Background and Evidence

This tenancy began August 12, 2011 with monthly rent of \$2685.00 and the tenant paid a security deposit of \$1342.50.

The tenant testified that they viewed the rental unit at the end of July 2011 with the previous tenant and entered into a tenancy agreement and paid the landlord's real estate agent the security deposit. The tenant stated that on August 12, 2011 her husband and the landlord completed a move in inspection and found the property to be in acceptable condition.

The tenant stated that on August 12, 2011 when she arrived at the rental unit with their belongings, that was when they discovered mold on the walls and rodent droppings in the kitchen cupboards. The tenant stated that she was very concerned for the health and safety of her family and immediately contacted a home inspector to come and conduct an inspection.

The tenant stated that the home inspector conducted a limited inspection on part of the basement and noted that there was a 'mold like substance' and that a hazmat or mold specialist should be contacted to make positive identification. The home inspector also noted high moisture reading in the basement area and a bathroom. The home inspector

in his report goes on to state that 'in my opinion, it is not a healthy environment, especially where children are inhabitants'.

The tenant stated that she had made repeated attempts to contact the landlord and his real estate agent by phone and email to discuss the issues with the rental unit but that they would not return her calls. The tenant stated that she had not put her concerns in writing to the landlord as much of their communication had been by email. The tenant stated that the landlord's agent finally acknowledged the mold problem and suggested that the tenants rent a steam cleaner and clean the carpets. The tenant stated that due to the conditions in the rental unit they had no other option but to put their belongings in storage and find alternate housing.

The landlord testified that he had not known about the mold issue and thought that what the tenants believed to be mold was just dirt from the previous tenant.

The tenant stated that in October 2011 she provided the landlord's agent with a letter outlining all the issues with the rental property, their forwarding address and requested return of the security deposit. The landlord acknowledged that he had not made a claim against the security deposit or returned the security deposit to the tenant.

The tenant in this application is seeking return of double the security deposit, reimbursement of the rent paid for August 12, 2011 through August 31, 2011 and \$1000.00 in moving expenses.

### Analysis

Based on the documentary evidence and testimony of the parties, I find on a balance of probabilities that the tenant has met the burden of proving that they have grounds for entitlement to a monetary order for return of double the security deposit.

Section 38(1) of the *Residential Tenancy Act* provides that the landlord must return the security deposit or apply for dispute resolution within 15 days after the later of the end of the tenancy and the date the landlord received the tenant's forwarding address in writing; the landlord in this case had done neither.

Section 38(6) of the *Residential Tenancy Act* provides in part that if a landlord does not comply with his statutory obligation to return the security deposit within 15 days, the landlord must pay the tenant double the amount of the deposit. Accordingly I find that the tenant is entitled to a monetary order for \$2685.00.

Based on the documentary evidence and testimony of the parties, I find on a balance of probabilities that the tenant has not met the burden of proving that they have grounds for entitlement to a monetary order for money owed or compensation due to damage or loss.

The tenant has requested return of the \$1688.95 rent paid for August 2011 however a tenancy agreement was entered into and the landlord entitled to this rent. The tenant did not provide the landlord a letter outlining their concerns with the rental property resulting in the landlord not having the opportunity to correct the problem. Therefore this portion of the tenant's claim is dismissed without leave to reapply.

The tenant has also not provided an receipts for \$1000.00 in moving costs and I find, pursuant to section 62(2) of the Act, that in the absence of any verification of the costs claimed, that the claim for moving costs is dismissed without leave to reapply.

As the tenant has been successful in their application the tenant is entitled to recovery of the \$100.00 filing fee.

### Conclusion

I find that the tenant has established a monetary claim for \$2685.00 in return of double the security deposit. The tenant is also entitled to recovery of the \$100.00 filing fee. I grant the tenant a monetary order under section 67 for the amount of **\$2785.00**.

If the amount is not paid by the landlord(s), the Order may be filed in the Provincial (Small Claims) Court of British Columbia 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: February 15, 2012

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Residential Tenancy Branch