



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNSD, FF

### Introduction

This matter dealt with an application by the Tenant for the return of a security deposit.

The Tenant said he served the Landlord with the Application and Notice of Hearing (the “hearing package”) by registered mail on February 3, 2012. The Tenant said the registered mail package was returned unclaimed. Based on the evidence of the Tenant, I find that the Landlord was served with the Tenant’s hearing package as required by s. 89 of the Act and the hearing proceeded in the Landlord’s absences.

### Issues(s) to be Decided

1. Is the Tenant entitled to the return of the security deposit?

### Background and Evidence

This tenancy started in September, 2007 in a different rental unit and then continued in this rental unit on April 1, 2010 as a month to month tenancy. The tenancy ended December 31, 2011. Rent was \$650.00 per month payable in advance of the 1<sup>st</sup> day of each month. The Tenant paid a security deposit of \$325.00 in September, 2007.

The Tenant said that he moved out of the rental unit on December 31, 2011 and gave the Landlord his forwarding address in writing on December 31, 2011. The Tenant said there was a move in and a move out condition inspection reports completed. The Tenant continued to say that he cleaned the unit before leaving and he asked the Landlord for his deposit back. The Tenant continued to say the Landlord sent him a cheque for \$331.41 on January 27, 2012 representing his security deposit of \$325.00 and accrued interest of \$6.41 from September 2007. The Tenant said he has made this application because the Landlord returned his security deposit after the 15 days time limit for the return of a security deposit allowed under the Act. The Tenant said he is applying for double the security deposit of  $\$325.00 \times 2 = \$650.00$  plus the filing fee of \$50.00 less the security deposit returned of \$325.00. The Tenant said he believes the Landlord owes him the security deposit of \$375.00 and the filing fee of \$50.00 because the Landlord did not comply with the Residential Tenancy Act. As well the Tenant said he cleaned the unit before leaving and the move out condition inspection report says the Tenant will receive his full deposit back. The Tenant submitted photographs to support his claim that the unit was left in a clean state.

## Analysis

Section 38 (1) says that except as provided in subsection (3) or (4) (a), within 15 days after the later of

- (a) the date the tenancy ends, and
- (b) the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one of the following:

- (c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;
- (d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

And Section 38 (6) says if a landlord does not comply with subsection (1), the landlord

- (a) may not make a claim against the security deposit or any pet damage deposit, and
- (b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

I find from the Tenant's affirmed testimony that the Tenant did give the Landlord a forwarding address in writing on December 31, 2011. The Landlord did not repay security deposit to the Tenant within 15 days of the end of the tenancy or 15 days after receiving the Tenant's forwarding address in writing, nor did the Landlord apply for dispute resolution. Consequently I find for the Tenant and grant an order for double the security deposit of \$325.00 in the amount of  $\$325.00 \times 2 = \$650.00$  less the security deposit amount returned to date of \$325.00. The total amount owing is \$325.00.

As the Tenant is successful in this matter I further order the Tenant to recover the filing fee of \$50.00 for this proceeding from the Landlord. Pursuant to section 67 a monetary order for \$375.00 will be issued to the Tenant. This Monetary order represents double



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the security deposit \$650.00 less the amount of \$325.00 returned to date in the amount of \$325.00 plus the filing fee of \$50.00.

## Conclusion

I find in favour of the Tenant's monetary claim. Pursuant to sections 38 of the Act, I grant a Monetary Order for \$375.00 to the Tenant. The order must be served on the Respondent and is enforceable through the Provincial Court of British Columbia (small claims court) 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*.

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Dispute Resolution Officer