



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNSD, FF

### Introduction

This hearing was convened as a result of the landlord's successful application for review regarding the Decision and monetary order issued against them on March 21, 2012, said Decision and order being suspended by a Dispute Resolution Officer's (DRO) Decision issued on April 18, 2012 pending the review hearing. The reviewing DRO ordered that the review be conducted by holding a new hearing.

The Decision of March 21, 2012, granted the tenant a monetary order of \$550.00, which was comprised of the tenant's security deposit of \$350.00, doubled and the filing fee of \$50.00, less \$200.00 previously paid by the landlord to the tenant.

I note that the Decision of March 21, 2012, incorrectly stated that the sum of \$700.00 payable to the tenant was for rent owed instead of his security deposit, doubled.

The landlord applied for a review based upon their contention that they were unable to attend the original hearing on March 21, 2012, due to circumstances beyond their control, that they had new evidence not available at the time of the hearing, and based upon their contention that the Decision was obtained by fraud. The landlord's application was granted due to the reviewing DRO's finding that the landlord was unable to attend because of circumstances that could not be anticipated and were beyond their control. The reviewing DRO also decided that a new hearing was to be conducted and that the other two points raised in the landlord's Review application could be raised for consideration at the new hearing.

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

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence **relevant** to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

Is the tenant entitled to a monetary order for the return of his security deposit and for recovery of the filing fee?

Should the suspended Decision and Order of March 21, 2012, be set aside, varied or confirmed?

Issue(s) to be Decided

There is no dispute that this tenancy began on December 1, 2010, ended on May 31, 2011, and the tenant paid a security deposit of \$350.00 at the beginning of the tenancy.

The tenant submitted that the landlord was provided their written forwarding address on May 31, 2012, on the condition inspection report. The landlord agreed.

The tenant stated that the landlord made deductions from their security deposit and returned the amount of \$192.20. The landlord agreed.

The tenant submitted that they did not agree to the deductions.

The landlord disagreed and stated that the tenant agreed to the deductions by way of their signatures on the tenancy agreement. The landlord pointed to the clause in the tenancy agreement which stated that the tenant would be responsible for a professional cleaning of the carpets, among other items. Additionally that clause also listed an amount of \$16.00 per hour for suite cleaning.

When questioned, the landlord also referenced the condition inspection report, which I note had not been supplied into evidence. I allowed the parties to submit the condition inspection report after the hearing, which both did.

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.

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 on May 31, 2011, and that the landlord 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 their written consent prior to returning a portion of the security deposit. I find the condition inspection report contained no such written authority for a deduction.

Contrary to the landlord's contention, the tenant's signature on a tenancy agreement is not written authority for automatic deductions. Section 20 of the *Act* also states that the 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 therefore find the landlord was obligated to return the security deposit of \$350.00, but failed to do so.

Having granted the tenant's application, I also find that they are entitled to recover the filing fee of \$50.00.

I find that the tenant has established a monetary claim of \$557.80, comprised of their security deposit of \$350.00, doubled, and the filing fee of \$50.00, for a total of \$750.00. From this amount I have deducted the amount of \$192.20, which the landlord has previously returned.

Having granted the tenant's application, I find that the Decision and Order of the Residential Tenancy Branch ("RTB") dated March 21, 2012, should be set aside due to the variance in the amount said to be returned to the tenant. Although I find no fault with the ruling of the DRO in the Decision of March 21, 2012, that Decision listed incorrect information given to the DRO in the hearing as to the amount returned by the landlord to the tenant was actually \$192.20, instead of \$200.00.

Conclusion

I find that the tenant has established a total monetary claim for the sum of \$557.80.

I grant the tenant a monetary order for \$557.80 and enclose that monetary order 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) for enforcement should the landlord fail to comply with this monetary order.

The Decision and Order of March 21, 2012, are set aside and therefore have no force or effect and are to be replaced with this Decision and 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: May 14, 2012.

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Residential Tenancy Branch