



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Dispute Codes:**

MNSD; FF

### **Introduction**

This is the Tenant's application for a monetary order for return of the security deposit paid to the Landlord and to recover the cost of the filing fee from the Landlord.

The Tenant gave affirmed testimony at the Hearing.

The Tenant testified that the Landlord's agent refused to provide her with the Landlord's mailing address at the end of the tenancy. The Tenant provided copies of text messages from the Landlord's agent in evidence indicating that he declined to give her an address.

The Tenant stated that she received a partial refund of her security deposit on or about April 16, 2012, so she mailed the Notice of Hearing documents and copies of her documentary evidence to the Landlord at the return address provided on the envelope enclosing partial return of her security deposit. Tenant provided a copy of the registered mail receipt indicating that the package was mailed on May 4, 2012, along with a copy of the envelope that contained her partial refund and a copy of the cheque. The Tenant testified that the registered mail package was returned to her, unclaimed.

Section 90 of the Act deems service by registered mail to be effected 5 days after mailing the documents. Based on the Tenant's affirmed testimony and the documentary evidence provided, I am satisfied that the Landlord was sufficiently served with the Notice of Hearing documents by registered mail, pursuant to the provisions of Section 71(2)(b) of the Act, on May 9, 2012.

### **Issues to be Decided**

- Is the Tenant entitled to return of the security deposit pursuant to the provisions of Section 38 of the Act?

### **Background and Evidence**

The Tenant testified that she moved into the rental unit on March 1, 2004 and out of the rental unit on March 31, 2012, and provided the building manager “Shaun” her forwarding address in writing on that date.

The Tenant testified that there was no Condition Inspection Report completed at the beginning or the end of the tenancy. She stated that she was expecting her security deposit to be refunded in full, but she only received \$161.13 on April 20, 2012.

The Tenant testified that the cheque in the amount of \$161.13 was calculated as follows:

|   |                  |
|---|------------------|
| Security deposit paid                         | \$625.00         |
| Plus accrued interest on the security deposit | \$22.13          |
| Plus rent overpayment                         | <u>\$15.00</u>   |
| Subtotal                                      | \$662.13         |
| Less “cleaning and garbage”                   | <u>-\$501.00</u> |
| Balance to Tenant                             | \$161.13         |

The Tenant testified that she did not agree that the Landlord could retain any of the security deposit.

The Landlord has not filed an application for dispute resolution claiming against the security deposit.

### **Analysis**

A security deposit is held in a form of trust by the Landlord for the Tenant, to be applied in accordance with the provisions of the Act.

Section 38(1) of the Act provides that (unless a landlord has the tenant’s consent to retain a portion of the security deposit) at the end of the tenancy and after receipt of a tenant’s forwarding address in writing, a landlord has 15 days to either:

1. repay the security deposit in full, together with any accrued interest; or
2. make an application for dispute resolution claiming against the security deposit.

The envelope in which the Landlord returned a portion of the Tenant’s security deposit is post marked April 16, 2012. The Tenant testified that she gave the Landlord’s agent her forwarding address on March 31, 2012. Clearly, the Landlord had the Tenant’s forwarding address by April 16, 2012, in order to return a portion of her security deposit.

The Landlord did not return the security deposit in full, together with accrued interest, within 15 days of receipt of the Tenant's forwarding address, nor did the Landlord file for dispute resolution against the security deposit.

Section 38(6) of the Act provides that if a landlord does not comply with Section 38(1) of the Act, the landlord **must** pay the tenant double the amount of the security deposit. Therefore, I find that the Tenant is entitled to a monetary award, calculated as follows:

|   |                   |
|---|-------------------|
| Security deposit x 2:   | \$1,250.00        |
| Plus accrued interest:  | <u>\$22.14</u>    |
| Subtotal  | \$1,272.14        |
| Less Portion of security deposit returned on April 16, 2012:<br>(\$161.13 - \$15.00 rent overpayment) | <u>-\$146.13</u>  |
| Balance owing:  | <b>\$1,126.01</b> |

The Tenant has been successful in her application and I find that she is entitled to recover the cost of the **\$50.00** filing fee from the Landlord.

### **Conclusion**

I hereby provide the Tenant a Monetary Order in the amount of **\$1,176.01** for service upon the Landlord. This Order may be filed in the Provincial Court of British Columbia (Small Claims) 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: July 03, 2012.

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Residential Tenancy Branch