



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes: MNSD

### Introduction

This hearing concerns the tenant's application for a monetary order as compensation for the double return of the security deposit. Both parties participated in the hearing and gave affirmed testimony.

### Issue(s) to be Decided

Whether the tenant is entitled to the above under the Act, Regulation or tenancy agreement.

### Background and Evidence

There is no written tenancy agreement in evidence for this month-to-month tenancy which began in November 2011. Monthly rent of \$600.00 was due and payable in advance on the first day of each month, and a security deposit of \$300.00 was collected. A move-in condition inspection report was not completed.

Sometime around mid-April the tenant gave verbal notice to end the tenancy effective at the end of April 2012. Subsequently, the tenant vacated the unit on or about April 29, 2012. A move-out condition inspection report was not completed.

By letter dated April 30, 2012, the tenant informed the landlord of his forwarding address and requested the return of his full security deposit. The tenant testified that he hand delivered the letter to the landlord's mail box on April 30, 2012. For her part, the landlord testified that it was not until May 10, 2012 when she found the letter in her mailbox. Thereafter, the landlord undertook to deliver an envelope to the tenant at his new address with a cheque enclosed in the amount of \$200.00. The cheque was dated May 25, 2012, and the landlord had made deductions from the \$300.00 security deposit in the total amount of \$100.00 as follows:

\$65.00: carpet cleaning

\$35.00: repair dents and paint wall in the living room

As the tenant declined to accept the envelope, the landlord decided to leave it “with him anyway.” However, on the following day the landlord found the cheque returned to her mailbox in the unopened envelope.

### Analysis

The full text of the Act, Regulation, Residential Tenancy Policy Guidelines, Fact Sheets, forms and more can be accessed via the website: [www.rto.gov.bc.ca](http://www.rto.gov.bc.ca)

Section 63 of the Act speaks to the **Opportunity to settle dispute**. Despite some effort by the parties to resolve the dispute between them during the hearing, no mutually agreeable settlement was achieved.

Section 38 of the Act addresses **Return of security deposit and pet damage deposit**. In part, this section provides that at the end of a tenancy, the landlord may retain an amount from the security deposit if “the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant.”

This section also provides that within 15 days of the later of the date the tenancy ends, and the date the landlord receives the tenant’s forwarding address in writing, the landlord must either repay the security deposit or file an application for dispute resolution. If the landlord does neither, section 38(6) of the Act provides that the landlord may not make a claim against the security deposit and must pay the tenant double the amount of the security deposit.

Based on the documentary evidence and testimony of the parties, I find that the tenant did not provide the landlord with written authorization to retain any portion of the original security deposit. Further, even if I find that it was not until May 10, 2012 when the landlord received the tenant’s forwarding address, I find that the landlord neither returned the tenant’s full security deposit nor filed an application for dispute resolution within 15 days after that date. In the result, I find that the tenant has established entitlement to a **monetary order** for the double return of his security deposit in the total amount of **\$600.00** (2 x \$300.00).

Finally, there are other statutory provisions which bear directly on the circumstances of this dispute and, accordingly, the attention of the parties is specifically drawn to the following sections of the Act:

Section 23: **Condition inspection: start of tenancy or new pet**

Section 24: **Consequences for tenant and landlord if report requirements not met**

Section 35: **Condition inspection: end of tenancy**

Section 36: **Consequences for tenant and landlord if report requirements not met**

In summary, sections 24 and 36 of the Act provide that the right of the landlord to claim against a security deposit is extinguished if the landlord does not provide 2 opportunities for a move-in and / or move-out inspection, or having complied with the foregoing does not participate on either occasion, or does not complete the condition inspection report(s) and give the tenant a copy in accordance with the regulations.

### Conclusion

Following from all the above and pursuant to section 67 of the Act, I hereby issue a **monetary order** in favour of the tenant in the amount of **\$600.00**. Should it be necessary, this order may be served on the landlord, filed in the Small Claims Court 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 23, 2012.

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Residential Tenancy Branch