



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes: MNDC, MNSD

### Introduction

This hearing concerns the tenant's application for a monetary order as compensation for damage or loss under the Act, Regulation or tenancy agreement / and compensation reflecting the double return of the security deposit. Both parties participated and / or were represented 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

Pursuant to a written tenancy agreement, a copy of which is not in evidence, this month-to-month tenancy began on November 1, 2010. Monthly rent of \$410.00 is due and payable in advance on the first day of each month, and a security deposit of \$200.00 was collected.

Arising from rent which was unpaid when due on April 1, 2012, the landlord issued a 10 day notice to end tenancy for unpaid rent dated April 2, 2012. A copy of the notice was submitted in evidence. The landlord's agent "KC" testified that while a message related to overdue rent was posted on the tenant's door on April 3, 2012, the 10 day notice itself was personally served on the tenant on April 3, 2012. During the hearing the tenant testified that he attempted on April 10, 2012 to pay the overdue rent to the landlord's agent "ATM" (now retired), however, "ATM" declined to accept payment. In the result, no payment was made for April's rent after issuance of the 10 day notice, and the tenant vacated the unit towards the end of April 2012.

By letter dated April 29, 2012, the tenant informed the landlord of his forwarding address and requested the return of his security deposit. As the security deposit was not returned, the tenant filed an application for dispute resolution on May 17, 2012,

seeking, in part, a monetary order for the double return of his security deposit (2 x \$200.00 = \$400.00).

In his application the tenant also seeks additional compensation. During the hearing the tenant clarified that the additional compensation totals \$825.00. This amount is calculated by tripling the difference in rent paid for the subject unit (\$410.00) and rent paid in the unit where he presently resides (\$685.00). The difference in these rents is \$275.00 (\$685.00 - \$410.00), which becomes \$825.00 when tripled. The tenant takes the position that this entitlement arises out of the stress and inconvenience he experienced as a result of being required to vacate the unit with “such short notice.”

While the parties discussed possible resolution of the dispute during the hearing, no mutual agreement for settlement was achieved.

### 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 38 of the Act addresses **Return of security deposit and pet damage deposit**. In part, this section 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, I find that the landlord did not comply with the above statutory provisions. Accordingly, I find that the tenant has established entitlement to a monetary order for \$400.00, which is calculated as double the amount of the original security deposit (2 x \$200.00).

As to the remaining aspect of the tenant’s application, I find on a balance of probabilities that the 10 day notice was served in person on April 3, 2012, and that the tenant did not pay or offer to pay the outstanding rent until April 10, 2012, which is beyond the statutory 5 day period available to the tenant following service of the notice. In this regard, section 46(4) & (5) of the Act provides as follows:

46(4) Within 5 days after receiving a notice under this section, the tenant may

- (a) pay the overdue rent, in which case the notice has no effect, or
  - (b) dispute the notice by making an application for dispute resolution.
- (5) If a tenant who has received a notice under this section does not pay the rent or make an application for dispute resolution in accordance with subsection (4), the tenant
- (a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and
  - (b) must vacate the rental unit to which the notice relates by that date.

I find there is insufficient evidence that the landlord failed to comply with the Act in the manner in which the 10 day notice was served, or failed to behave consistently with the Act by insisting that the tenant vacate the unit after payment of rent was not made within 5 days after service of the notice. As a result, the remaining aspect of the tenant's application concerning compensation is hereby dismissed.

### Conclusion

Pursuant to section 67 of the Act, I hereby issue a **monetary order** in favour of the tenant in the amount of **\$400.00**. Should it be necessary, this order may be served on the landlord, filed in the Small Claims Court and enforced as an order of the 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 18, 2012.

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Residential Tenancy Branch