



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes: MNDC, MNSD, FF

### Introduction

This matter was previously scheduled for hearing by way of conference call on April 26, 2012. That hearing was scheduled in response to the tenant's application for a monetary order reflecting compensation for the double return of the security deposit, in addition to recovery of the filing fee. In his application the tenant also sought compensation for damage or loss under the Act, Regulation or tenancy agreement as follows:

2 hrs lost wages:	\$52.00
NSF cheque:	\$8.00
Certified letter:	\$9.00

While the tenant attended the previous hearing and gave affirmed testimony, the landlord was not present. A Decision was issued by date of April 26, 2012, pursuant to which a Monetary Order was issued in favour of the tenant reflecting the double return of his security deposit, in addition to reimbursement of an NSF fee and the filing fee.

Subsequent to the above, the landlord filed an Application for Review Consideration. By way of an Interim Decision dated July 9, 2012, the dispute resolution officer adjourned the matter "pending the outcome of the Provincial Court hearing" scheduled for July 24, 2012. The Provincial Court hearing concerned a Garnishee Order granted to the tenant and arising from the Monetary Order issued in his favour pursuant to the Decision of April 26, 2012.

Thereafter, the landlord provided the Director with a copy of the Provincial Court Order dated July 24, 2012. Following this, by Decision dated August 1, 2012, the landlord's Application for Review Consideration was granted. This present hearing was then scheduled and the original Decision and Monetary Order dated April 26, 2012 were suspended.

Issue(s) to be Decided

Whether the tenant is entitled under the Act, Regulation or tenancy agreement to any or all of the compensation claimed.

Background and Evidence

Pursuant to a written tenancy agreement, the month-to-month tenancy began on October 18, 2009. Monthly rent of \$500.00 was due and payable in advance on the first day of each month, and a security deposit of \$250.00 was collected. Heat is not shown as included in the rent. The tenancy agreement provides that "Electrical will be pro-rated @ \$40.00 a month until such time as a meter is installed when the Hydro will become the tenant's responsibility." There is no move-in condition inspection report in evidence.

By what appears to be an e-mail, which is dated October 31, 2011, the landlord gave the tenant a "60 day notice to vacate" the unit. Tenancy then ended effective December 31, 2011. There is no move-out condition inspection report in evidence.

As to the disposition of the security deposit, on January 1, 2012 the landlord personally gave the tenant a cheque for \$270.00, reflecting what the landlord considered was repayment of the full security deposit. Thereafter, the tenant was unable to cash the cheque due to not sufficient funds (NSF) in the landlord's bank account.

With the passage of time, the landlord received a hydro bill, a portion of which he considered was the tenant's responsibility. As a result, the landlord gave some thought to putting a stop payment on the cheque he had issued to the tenant. During a visit to the bank the landlord was informed that the cheque he had issued to the tenant had not cleared. On that occasion the landlord became aware that he had mistakenly written the cheque for \$270.00, noting that it should have been for \$250.00. The landlord claims that it was this error / oversight on his part which led to the tenant's inability to cash the cheque.

Following this the tenant contacted the landlord by telephone in regard to the NSF cheque. During their conversation, not only was the tenant upset about the cheque, the landlord was upset about the hydro bill. In his written submission the landlord comments on the telephone conversation, in part, as follows:

[the tenant] called me shortly after I learned about the cheque not clearing. I shared that I had an enormous hydro bill and this required a solution on both our parts. He was very rude and biligerent [sic]. I told him again the electricity and heat were not included in the rent and that he was responsible for the bill. There was an impass [sic]. I asked for his address and he hung up on me. I had no way to resolve this problem as I did not have an ability to contact him via mail or phone. Any contact between [the tenant] and myself was initiated by him. Without the ability to connect, I paid the hydro bill.

The failure of the landlord to attend the hearing that was subsequently scheduled in response to the tenant's application for dispute resolution, appears to have arisen from the tenant's service of the application for dispute resolution and notice of hearing (the "hearing package") to an address which was different from the landlord's "address for service" as shown on the written tenancy agreement.

There is no documentary evidence before me of the tenant's having provided the landlord with a forwarding address in writing at the end of tenancy.

### 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 speaks to **Return of security deposit and pet damage deposit**, and provides in part as follows:

38(1) 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.

Further, section 38(6) of the Act provides:

38(6) 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.

Based on the documentary evidence and the testimony of the parties, I find on a balance of probabilities that the landlord mistakenly issued a cheque to the tenant in an amount which was in excess of the tenant's original security deposit, and that this error led directly to the tenant's inability to cash the cheque. While the amount of the cheque was in error, I note that the cheque was issued by date of January 1, 2012, which is immediately following the end of tenancy.

I also find that the tenant did not provide the landlord with his forwarding address in writing at the end of tenancy. Despite this, I am satisfied that the parties now know each other's mailing address. In the result, I find that the tenant has established entitlement to return of the security deposit in the original amount of **\$250.00**.

Based on a bank statement submitted into evidence by the tenant, I also find that the tenant has established entitlement to recovery of an NSF fee in the amount of **\$7.00**.

As the tenant has succeeded with his application, I further find that he has established entitlement to recovery of the **\$50.00** filing fee.

Section 72 of the Act addresses **Director's orders: fees and monetary orders**. With the exception of the filing fee for an application for dispute resolution, the Act does not provide for the award of costs associated with litigation to either party. Accordingly, the tenant's application to recover "lost wages" and costs associated with mailing are hereby dismissed.

Section 82 of the Act speaks to **Review of director's decision or order**, and provides in part as follows:

82(2) The director may conduct a review

(c) by holding a new hearing.

(3) Following the review, the director may confirm, vary or set aside the original decision or order.

Arising from the findings set out above, and pursuant to the statutory provisions included in section 82 of the Act, I hereby order that the original Decision and Monetary Order dated April 26, 2012 are set aside.

### Conclusion

Pursuant to section 67 of the Act, I hereby issue a **monetary order** in favour of the tenant in the amount of **\$307.00** (\$250.00 + \$7.00 + \$50.00). 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: August 22, 2012.

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Residential Tenancy Branch