



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Dispute Codes:**

MNSD

### **Introduction**

This is the Tenants' application for a monetary order for double the security deposit paid to the Landlord.

The parties gave affirmed testimony at the Hearing.

The Tenants testified that they mailed the Notice of Hearing documents to the Landlord, by registered mail, on July 25, 2012. The Landlord acknowledged receiving the documents on July 26 or 27, 2012.

### **Preliminary Matters**

At the outset of the Hearing, the Landlord's agent asked that the Tenants' Application be dismissed because they did not provide the Landlord with a copy of their Application within 3 days of filing it, as required by the Act.

The Tenants stated that they were both disabled and on a limited income. They stated that they could not afford to serve the Landlord until July 25, 2012.

Section 59 of the Act requires an applicant to provide the respondent with a copy of his application within 3 days of making it. However, there is no provision in the Act for dismissal of an Application if it is not provided to the respondent within 3 days. I asked the Landlord's agent if he required more time to prepare for the Hearing and he declined to ask for an adjournment.

### **Issues to be Decided**

- Are the Tenants entitled to a monetary order for double the security deposit pursuant to the provisions of Section 38 of the Act?

### **Background and Evidence**

This tenancy began on March 1, 2012. The Tenant RH moved out of the rental unit on May 1, 2012 and the Tenant KA moved out on May 3, 2012. Rent was \$900.00 per month, due on the first day of each month. The Tenants paid a security deposit in the amount of \$450.00 at the beginning of the tenancy. There was no Condition Inspection report completed at the beginning or the end of the tenancy.

The Tenants stated that they provided the Landlord with their forwarding address, by regular mail sent on May 9, 2012. The Tenants provided a copy of the receipt for the stamp together with the letter providing their address in evidence.

The Tenants testified that the Landlord has not returned any of the security deposit.

The Landlord's agent testified that the Tenants did not pay any rent for the three days in May that they overheld. He stated that the Tenants left a mess in the rental unit. The Landlord's agent testified that the Landlord did not receive the Tenant's forwarding address.

The Tenants acknowledged that they did not pay any additional rent after April 30, 2012, and that they did not finish cleaning the rental unit before they moved out.

### **Analysis**

This is the Tenants' application. The Landlord has not filed an application. I explained to the parties that the Landlord, in not performing the required condition inspections, extinguished her right to claim against the security deposit, but that she retains the right to apply for compensation under Section 67 of the Act.

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 Landlord's agent testified that the Landlord did not receive the Tenant's forwarding address in writing. The Tenants provided documentary evidence, including a receipt for a postage stamp dated May 9, 2012, and a copy of the letter dated May 9, 2012, with the Tenants' forwarding address. The Tenants also provided a copy of the envelope

which contained their forwarding address. When questioned why the envelope did not have a stamp on it, the Tenants replied that the drug store where they bought the stamp did not make photocopies, so they photocopied the letter and envelope and then photocopied the receipt onto the copy afterwards. I find on the balance of probabilities that the Tenants did mail the letter to the Landlord on May 9, 2012. Service in this manner is deemed to be received 5 days after mailing (May 14, 2012). The Landlord did not return the security deposit within 15 days, 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 Tenants are entitled to a monetary order for double the security deposit, in the amount of \$900.00.

### **Conclusion**

I hereby grant the Tenants a Monetary Order in the amount of **\$900.00** 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: August 17, 2012.

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Residential Tenancy Branch