



# 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 Tenants' application for a monetary order for double the security deposit paid to the Landlord and to recover the cost of the filing fee from the Landlord.

The parties gave affirmed testimony at the Hearing. It was determined that the Tenants served the Landlord with their Notice of Hearing documents by registered mail sent August 4, 2012. The Tenants also provided proof that they had served the Landlord with copies of their documentary evidence, by registered mail sent September 7, 2012.

It was determined that the Landlord provided the Tenants his documentary evidence, by registered mail sent September 11, 2012. Documents served by mail are deemed to be received 5 days after mailing them. The Tenants did not receive the Landlord's documentary evidence within 5 clear days of the Hearing, as required by Rule 4 of the Rules of Procedure, however the Tenants stated that they did not require more time to study the documents and that they wished to proceed with their application today.

### **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 April 1, 2011. A copy of the tenancy agreement was provided in evidence. This was a one year term tenancy which ended early, on January 31, 2012. Monthly rent was \$1,200.00, due on the first day of each month. The Tenants paid a security deposit in the amount of \$600.00 on March 30, 2011.

The parties agreed that a Condition Inspection Report was completed by both parties at the beginning of the tenancy. At the end of the tenancy, the parties agreed that no formal Condition Inspection was completed. The Landlord testified that his job precluded him from doing a Condition Inspection with the Tenants. The Landlord stated that he did a "walk through" and that the Tenants left a freezer and a hot tub at the

rental unit, which they were supposed to pick up. The Landlord stated that the freezer was not moved until 17 days later, and the hot tub was not moved for two months.

The Tenants testified that they mailed their forwarding address in writing, by registered mail, to the Landlord. The Tenants provided a copy of the letter and the tracking numbers for the registered mail. The Canada Post tracking information indicates that the letter was mailed on May 26, 2012, and successfully delivered on May 29, 2012.

The Landlord has not returned the security deposit or filed for dispute resolution against the security deposit.

### **Analysis**

I have considered all testimony and documentary evidence that met the requirements of the rules of procedure. However, I have referred only to the evidence that was relevant to the Tenants' application in this Decision.

A security deposit is held in a form of trust by the Landlord for the Tenants, 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 written 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.

I find that the Landlord received the Tenants' forwarding address in writing on May 29, 2012. The Landlord did not return the security deposit within 15 days of receipt of the Tenant's forwarding address, nor did the Landlord file for dispute resolution against the security deposit.

The Landlord gave testimony suggesting that he believed he had a claim for damage or loss arising from the tenancy. The Landlord is at liberty to file his own application with respect to any such claim.

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 **\$1,200.00**. No interest has accrued on the security deposit.

The Tenants have been successful in their application and I find that they are entitled to recover the cost of the **\$50.00** filing fee from the Landlord.

**Conclusion**

I hereby provide the Tenants a Monetary Order in the amount of **\$1,250.00** 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: September 24, 2012.

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Residential Tenancy Branch