



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNSD, FF

### Introduction

This matter dealt with an application by the Tenants for the return of a security deposit and to recover the filing fee for this proceeding.

### Issue(s) to be Decided

1. Are the Tenants entitled to the return of a security deposit and if so, how much?

### Background and Evidence

This tenancy started on May 1, 2006 and ended on July 1, 2012 pursuant to a 2 Month Notice to End Tenancy for Landlord's Use of Property. Rent was \$1,825.00 per month. The Tenants paid a security deposit of \$825.00 at the beginning of the tenancy.

The Tenant, S.H., said she delivered her forwarding address in writing to the Landlord's spouse on July 7, 2012. The Tenants' witness gave evidence that she accompanied the Tenant on that day and observed her hand a letter to a man at the door of the residence and then he called his spouse and gave the letter to her. The Landlord said she could not recall receiving this letter. The Landlord claimed instead that on July 6, 2012 she sent the Tenants a cheque in the amount of \$516.83. The Landlord said she knew the Tenant's new address because her husband followed the Tenants from the rental unit to the new address while they were moving. The Landlord said she retained \$336.00 of the security deposit to pay for yard maintenance expenses.

The Parties agree that a week prior to this hearing, the Landlord attended the Tenants' residence. The Tenant, S.H., claimed that the Landlord tried to persuade her to cancel the dispute resolution hearing and take a cheque for \$516.83 and also agreed to compensate her for the filing fee for her application for dispute resolution. The Landlord denied this and claimed that she asked the Tenant why she had not cashed the cheque she had sent but the Tenants but they claimed they had not received it. The Landlord said she offered the Tenants a cheque for the full amount of their security deposit but they refused to accept it.

The Parties agree that the Tenants did not give the Landlord written authorization to keep their security deposit. The Parties also agree that a condition inspection report was not completed at the beginning or at the end of the tenancy.

### Analysis

Section 38(1) of the Act says that a Landlord has 15 days from either the end of the tenancy or the date she receives the Tenant's forwarding address in writing (whichever is later) to either return the Tenant's security deposit or to make an application for dispute resolution to make a claim against it. If the Landlord does not do either one of these things and does not have the Tenant's written authorization to keep the security deposit then pursuant to s. 38(6) of the Act, the Landlord must return double the amount of the security deposit.

Sections 24(2) and 36(2) of the Act say that if a Landlord does not complete a move in or a move out condition inspection report in accordance with the Regulations, the Landlord's right to make a claim against the security deposit for damages to the rental unit is extinguished. In other words, the Landlord may still bring an application for compensation for damages however she may not offset those damages from the security deposit.

I find that the tenancy ended on July 1, 2012. I also find on a balance of probabilities that the Tenants gave the Landlord their forwarding address in writing on July 7, 2012. I find that there is little evidence to substantiate the Landlord's claim that she mailed the Tenants a cheque for part of the security deposit on July 6, 2012. Furthermore, I find it unlikely that she did so given that the Tenants had not provided a forwarding address at that time and the invoice for yard maintenance the Landlord filed as evidence at the hearing was not issued until July 30, 2012. Consequently, I conclude that none of the Tenants' \$825.00 security deposit has been returned to them.

I also find that the Landlord did not have the Tenants' written authorization to keep the security and that her right to make a claim against it for damages to the rental unit was extinguished under s. 24 and s. 36 of the Act because she did not complete a condition inspection report at the beginning or at the end of the tenancy. As a result, I find pursuant to s. 38(6) of the Act, the Landlord must return double the amount of the security deposit or \$1,650.00 plus accrued interest of \$27.83. The Tenants are also entitled pursuant to s. 72 of the Act to recover from the Landlord the \$50.00 filing fee they paid for this proceeding.

RTB Policy Guideline #17 at p. 2 states that "unless the tenant has specifically waived the doubling of the deposit, either on an application for the return of the deposit or at the hearing, the arbitrator will order the return of double the deposit." Although the Tenants applied to recover only the original amount of the security deposit, I find that they did not specifically waive reliance on s. 38(4) of the Act.

Conclusion

A Monetary Order in the amount of \$1,727.83 has been issued to the Tenants and a copy of it must be served on the Landlord. If the amount is not paid by the Landlord, the Order may be filed in the Provincial (Small Claims) Court of British Columbia 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: October 03, 2012.

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Residential Tenancy Branch