



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNSD, MNDC, FF

### Introduction

This hearing dealt with the tenant's application for dispute resolution under the Residential Tenancy Act (the "Act") seeking a monetary order for money owed or compensation for damage or loss, a monetary order for a return of her pet damage deposit, and for recovery of the filing fee.

The parties appeared, the hearing process was explained and they were given an opportunity to ask questions about the hearing process.

Thereafter all parties gave affirmed testimony, were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me.

The tenant confirmed that she had received the landlord's evidence. Neither party raised any issues regarding service of the application or the evidence.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure; however, I refer to only the relevant evidence regarding the facts and issues in this decision.

### Issue(s) to be Decided

Is the tenant entitled to a monetary order for the return of her pet damage deposit, which has been doubled, and to recover the filing fee?

### Background and Evidence

This tenancy began on August 1, 2011, ended on June 30, 2012, monthly rent was \$975.00, and a security deposit and pet damage deposit of \$487.50 each was paid on or about July 11, 2011 and August 11, 2011, respectively.

The parties agreed that the tenancy ended and the landlord was provided the tenant's written forwarding address on June 30, 2012, the date of the move out inspection. The parties also agree that the tenant was provided a copy of the move-out condition inspection report on June 30, 2012.

The tenant stated that she received her security deposit of \$487.50 on July 11, 2012, but has yet to receive her pet damage deposit as of the day of the hearing.

The landlord submitted that it was their intention to return both deposits, but in a rush to have all cheques ready for signing by the landlord, through a clerical error, only one deposit was returned. The landlord directed my attention to the "Security Deposit Refund Report," indicating such intention.

The landlord said that when he returned from vacation in August, the resident manager notified him of the mistake, at which time another cheque for \$487.50 was immediately mailed to the tenant.

In response, the tenant denied receiving the second cheque.

### Analysis

Based on the relevant oral and written evidence, and on a balance of probabilities, I find as follows:

Under section 38 of the Act, at the end of a tenancy a landlord is required to either return a tenant's security deposit and pet damage deposit or to file an application for dispute resolution to retain the security deposit within 15 days of the later of receiving the tenant's forwarding address in writing and the end of the tenancy. If a landlord fails to comply, then the landlord must pay the tenant double the security deposit or pet damage deposit, as applicable.

In the case before me, the undisputed evidence show that the landlord received the tenant's written forwarding address on June 30, 2012, the last day of the tenancy, the tenant has not agreed to any deductions from her either her security deposit or pet damage deposit, the landlord has not applied for arbitration claiming against the security deposit and pet damage deposit and has returned only the tenant's security deposit.

While the failure of the landlord to return the tenant's pet damage deposit may be the result of a clerical error only, the requirement of the landlord is to comply with section 38 and it is not discretionary.

Therefore, I find the tenant has successfully proven her application for a monetary order for a return of her pet damage deposit, doubled, and for recovery of the filing fee.

Conclusion

I find the tenant is entitled to a monetary award in the amount of \$1025.00, comprised of her pet damage deposit of \$487.50, doubled, and for recovery of the filing fee of \$50.00.

I therefore grant the tenant a final, legally binding monetary order in the amount of \$1025.00, which I have enclosed with the tenant's Decision.

Should the landlord fail to pay the tenant this amount without delay, the order may be filed in the Provincial Court of British Columbia (Small Claims) for enforcement 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* and is being mailed to both the applicant and the respondent.

Dated: October 24, 2012.

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Residential Tenancy Branch